Principle of Pro Bono Publico

Pro Bono legal service

Pro Bono legal service as a concept has not gained much momentum in the country and remains more of an ad hoc, individualized practice lacking an institutional structure.
Pro Bono comes from the Latin expression "pro bono publico" meaning "for the public good". Many lawyers provide poor and underprivileged clients with valuable legal advice and support without seeking any professional fee. Unfortunately, this laudable tradition of public service has not received any deserving recognition. In many countries pro bono legal support has emerged as the dominant means of dispensing free representation to poor and underserved clients.
The Constitution of India by virtue of Article 39 A directs the State to provide free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. Further, Article 14 and 22 (2) of the Constitution ensures equality before law. Also, the United Nations Sustainable Development – Goal 16 underscores the obligation of States 'to ensure equal access to justice for all'. Keeping in line with these obligations and with a view to encourage pro bono legal services the Department of Justice (DoJ) intends to create a database of lawyers willing to provide their services to litigants identified under Section 12 of The Legal Services Authority Act of 1987

Bandhua Mukti Morcha v. Union of India, 1984 AIR 802

The Petitioner, the Bandhua Mukti Morcha, a charitable group, inspected various stone quarries in the Faridabad district near Delhi and discovered many workers from Maharashtra, Madhya Pradesh Uttar Pradesh, and Rajasthan were in a miserable situation. On February 25, 1982, the petitioner wrote a letter to the Honourable Justice P. N. Bhagwati.
The letter provided the names of 11 Rajasthan employees, 30 Madhya Pradesh employees, 14 Uttar Pradesh employees, and their declarations demonstrating their vulnerability. Aside from jailed labour, the letter focused on fatal injuries, occupational respiratory sickness, and stone dust, respectively. It also mentioned dirty drinking water, inadequate sanitation, low pay, and sexual exploitation of women, all of which are enough to make workers' lives miserable. The petitioner requested the issuance of a writ

petition to ensure the proper implementation of labour welfare laws such as the Mines Act of 1952, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, the Contract Labour (Regulation and Abolition) Act 1970, the Bonded Labour System (Abolition) Act 1976, and the Minimum Wages Act of 1948, among others.

The letter was regarded as a Writ Petition by the Supreme Court. A court issued a notice appointing two attorneys, Ashok Srivastava and Ashok Panda, as commissioners to visit and cooperate with the workers at the stone quarries named in the letter. The commissioners' report was submitted on March 2, 1982, and said the following:

1. Many marble processing machines were in operation, resulting in a dusty atmosphere that made it difficult to breathe.
2. People over there did not have access to clean water and were forced to drink dirty water from a nallah in most cases.
3. They lived in jhuggies made of piled stones and straw; laborers could not leave the stone quarries.
4. They could not seek compensation for injuries sustained on the job.

On March 5, 1982, the Court ordered that all respondents receive copies of Ashok Srivastava and Ashok Panda's Report in written requests so that they might react to the facts presented in this Report. The Court has assigned Dr. Patwardhan of the Indian Institute of Technology to undertake a socio-legal study into the authenticity of state duties so that the State Government and its personnel can take the required steps to rectify the issue.

ISSUES RAISED:

Following the submission of Dr. Patwardhan's extensive and well-documented report to the court, the Apex Court outlined the following issues:

1. Whether the Writ Petition filed under Art. 32 of Indian Constitution is maintainable or not?
2. Whether or not Fundamental Rights have been abrogated?
3. Does the Supreme Court have the authority to appoint a commission?
4. Can the provisions of the Bonded Labour System (Abolition) Act of 1976 be invoked in this case?
5. Is there any disagreement over executing various social welfare laws for workers?

The reasoning is given by the Court:

The legal concerns were examined by the Bench, led by Justice Bhagwati, as follows:

Issue 1: The Hon'ble Court utterly dismissed the respondent's locus standi argument. Previously, the court held that only the aggrieved party might seek redress from the court. However, in *S. P. Gupta v. Union of India*[1], the Court declared that any member acting in good faith might petition the Court under Article 32 or Article 226 of the Constitution on behalf of the people suffering from poverty and lack of awareness and resources.

Furthermore, the Court concluded that there is no constraint in the wording of Article 32 that renders the requirement of locus standi a sine qua non. The Court further underlined that the terms "suitable proceeding" in Article 32 must be interpreted in this way: the condition of appropriateness must be considered in light of the objective for which the proceeding is to be taken, namely the enforcement of a fundamental right. As a result, the petition was found to be maintainable since the petitioner was working for the public good to protect the fundamental rights of the poor.

Issue 2: In response to Defendant's claim that there was no infringement of fundamental rights, the Supreme Court stated that the government is not anticipated to raise such concerns at the outset of the current P.I.L. asserting that certain workers were in servitude and under inhumane conditions. Instead, the Government must approve the Court's investigation to determine whether there is any wage slavery or other forms of forced labour. The P.I.L. is not an adversarial lawsuit by definition but rather a challenge and opportunity for the government to protect society's most vulnerable and despicable members.

The court cited the case of *Frances Mullins. W.C. Khambra*[2] held that Article 21 included the right to life and human dignity without exploitation.

Issue 3: According to the court, the respondent's claim on issue 3 concerning the nomination of Commissioners is based on a false premise of the procedures under Section 32 of the Constitution. The authority to provide any direction, order, or issue writs that may be pertinent to the assertion of the fundamental right in question is enshrined in Article 32 (2). The concurrent form of the phrase makes this clear. The Supreme Court has the power to issue writs such as mandamus, habeas corpus, prohibition, quo warranto, and certiorari, as well as writs similar to these high prerogative writs, even if the conditions for issuing any of these high prerogative writs are not met.

Issue 4: The Respondent claims that the laborers bear the burden of proof under the Bonded Labour System (Abolition) Act, 1976. To require bonded labourers to demonstrate that they perform forced labour in exchange for an

advance or other economic reward. Only then would they be eligible for benefits under the Act, is to expect them to do an extraordinarily extraordinary task difficult, if not impossible. In response to this, the Supreme Court stated that anytime the subject of forced labour is brought before the court, it will prima facie create a presumption that the laborers are giving forced work for financial gain.

Issue 5: In this scenario, the quarrying stone is deemed a 'mine' within the sense of Section 2 (j) of the Mining Act, 1952, because they are excavations where operations to get stone quarrying are carried out. Even so, because the holes in these stone quarries extend below super-jacent ground, they are not considered "open cast working." Apart from that, respondents attempted to protect themselves by relying on Section 3(1) (b) of the Act of 1952, which exempts quarries from the current legislation. The standards set out in state 3(1) (b) are not met because the operation of these mines is underground and not "open cases," and explosives are approved for use in mining.

In terms of the Cross Migrant Workmen Act, 1959, the Court held that thekedars or jamadars fall under Section 2(1) (b) of the Act as contractors and that the owners also meet Section 2(1)'s criteria (g). However, suppose five or more workmen in an organization fall within the definition of Cross Migrant Workmen as described in Section 2 sub-section (1) clause (e). In that case, five or more workmen in an organization fall within the definition of Cross Migrant Workmen as described in Section 2 sub-section (1) clause (e), the Inter-State Migrant Workmen Act will apply only to the establishments in which they are engaged.

Even though the majority of workers employed in Haryana's stone quarries and stone crushers come from Uttar Pradesh, Madhya Pradesh, Rajasthan, Tamil Nadu, and Andhra Pradesh, according to Dr. Patwardhan's report, there are only a few workers from Haryana, the Court ruled that an investigation into whether the state's employers employed any inter-state stoneworkers should be conducted.

To satisfy the Constitutional requirement, the Haryana government was instructed to enforce the Minimum Wages Act of 1948, the Workmen Compensation Act of 1923, the Employees' State Insurance Act of 1948, the Employees' Provident Funds and Miscellaneous Provisions Act of 1952, and the Maternity Benefit Act of 1961.

Final Judgment:

The Court addressed the importance of safeguarding children's entitlements or rights to education, security, and health, as well as the advancement of India as a democratic society, in its decision. While the Court acknowledged that a child's work could not be promptly revoked due to financial constraints, it determined that practical efforts might be made to protect and improve youth rights in India's poor and underprivileged populations.

On the side of its decision, the Court alluded to different basic rights and order standards of the Indian Constitution, including, Article 21, Article 24, Article 39 (e) (disallows constraining residents into employments unsuited for their age or quality), Article 39(f) (depicts the State's obligations to shield youngsters from abuse and to guarantee kids the chances and offices to create soundly), and Article 45 (commands the State to give free obligatory training to all children beneath 14 years).

The Court also took note of India's responsibilities under the Universal Declaration of Human Rights (UDHR) and the Convention on the Child's Rights to provide free primary education to all children in the country and protect children from financial exploitation. The measures requested in *M.C. Mehta v. Province of Tamil Nadu and Ors*[3]., a previous case, were mentioned by the Court and merged in the requests to Uttar Pradesh and Bihar. The recommendations included advising states on how to design plans to logically dispose of the labour of children under the age of 14; providing mandatory training to all children employed in processing plants, mining, and other enterprises; ensuring that children receive supplement-rich nutrition; and regulating the use of children under the age of 14 in processing plants, mining, and other enterprises.

Case Comment:

The entire case of Bandhua Mukti Morcha v Union of India & Ors.[4]is a landmark case in India's history of bonded labour. The Bonded Labour (Abolition) Act came into effect in 1976. Article 21's unmistakable requirement is that bonded employees be identified, discharged, and adequately rehabilitated. The Act was passed under the state's Directive Principles of State Policy to protect bound laborers' human dignity. Any failure on the part of the Indian government to intervene would constitute a breach of Article 21 of the Constitution. We may sum it up by saying that the court allowing the Public Interest Litigation provided a forum for public-spirited persons to protect constitutional and legal rights.

Free legal aid and services in India is primarily the mandate of National Legal Services Authority and State Legal Aid Services authorities which has a wide presence throughout the country. However, the legal needs of people continue to grow requiring meaningful contribution from the legal community.

The scheme is being offered under the umbrella scheme “Designing Innovative Solutions for Holistic Access to Justice” (DISHA) Scheme launched for a period of five years - 2021-2026 by Ministry of Law and Justice.

2. Rule of Prospective Overruling

The rule of Prospective Overruling

The prospective overruling is a decision made in a particular case would have operation only in the future and will not carry any retrospective effect on any past decisions.

- According to the literal meaning of this language, "prospective" refers to something that only operates in the future, while "overrule" refers to overturning a precedent or ruling.
- It has been characterized as a departure from the Blackstonian perspective of law, which holds that judges should follow the Doctrine of Stare Decisis in courts and that a judge's power is limited to declaring law rather than making it. This viewpoint certainly verifies the precedent's retrospective rule.
- The fundamental goal of courts in applying this Doctrine has been to achieve justice, as the principle of retrospective operation deprived an individual of a fair trial and outcome.
- The Doctrine establishes the parameters within which a court judgment must function. In plain English, it states that transactions undertaken before a judicial decision would not be considered illegitimate after the law changes.
- Non-application of the Doctrine, according to Justice Cardozo, would result in great injustice and would negate the dynamic nature of law. This Doctrine is a vital tool for adapting to the changing requirements of society and ensuring fair justice.

- Justice Subba Rao was a strong supporter of the concept, stating that its acceptance lays the groundwork for future transactions to recognize new and better norms.

It is commonly acknowledged that when a judicial pronouncement is made, it not only applies to any particular case but the ratio would apply to the future cases also. This is also the essence of the concept of precedent. In other words, the law declared by the court is not descriptive as the court holds it but also prescriptive in the sense the future judges have to use it. This, is other words, places precedent on a higher pedestal- a major source of law.

Precedent, as a source of law, is both declaratory and constitutive of law. And traditionally, the rule of retrospectivity is the norm. This means that when a law is declared invalid, then it is deemed to be invalid from the date law had come into existence or the date on which it was enacted. Thus, the rule of retrospective operation of a decision or pronouncement of a court, which is also one of the indispensable features of a precedent, confirms to the declaratory character of a precedent. This, in essence, is what is meant by Balckstonian principle wherein he says that judges do not make law, but only declare the law. Thus, we see that the decalraratory theory supports retroactive operation of a precedent.

Now, the concept of Prospective Overruling, as the title of the project reflects, is a deviation from the principle of retroactive operation of a decision and thus, a deviation from the traditional Blackstonian principle too. This principle, borrowed from the American Constitution, found its application first in the famous case of Golaknath v. State of Punjab . To illustrate, in very simple words, the implication of the invocation of the doctrine is that the decision of such a case would not have retrospective operation but would operate only in the future, i.e., have only prospective operation. This project now seeks to embark on a detailed analysis of the application and implications, both positive and negative, of the doctrine in the light of its invocation in the above mentioned case.

The Doctrine of 'Prospective Overruling: Its Application In India

The Doctrine of Prospective Overruling, as noted above, is a deviation for the traditional Blackstonian view of law, viz., the duty of the Court was "not to pronounce a new rule but to maintain and expound the old one". This doctrine offers foundations for an extended view of judicial function, which primarily centers on discretion and freedom of choice, to specify the time frame and the cases to which a particular pronouncement in a case will be applicable to. In the case of Naryanan Nair v. State of Kerela, Mathew J. explains the thrust of the doctrine by observing that it was not meant to supplant the traditional Blackstonian doctrine but was essentially meant to protect the interests of the litigants when judicial overruling of a precedent entailed a change in the law. In effect, what is contemplated through the doctrine is to lay down the scope of the pronouncement in a particular case with regard to its applicability to future cases and disputes. And the primary interest behind the courts actually applying this doctrine is the fact, as already mentioned, that courts always want to do justice and may apply various criteria to reach their ends. In this effort of theirs, there are instances when courts have themselves have invoked and laid down effective principles which will guide them in their endeavor and the above doctrine bears testimony to this point.

The essence of prospective overruling is that the Supreme Court lays down the parameters within which a law laid down in a case which overrules a previous judgment has to operate. The whole purpose is to avoid reopening of settled issues and also prevent multiplicity of proceedings; in effect, this means that all actions prior to the declaration do not stand invalidated. Also, as laid down in the case of Baburam v. C.C. Jacob , all the subordinate courts are bound to apply the law to future cases only. There may also be instances where the Supreme Court may specify the date when the declaration shall come into effect thereby not disturbing the decisions taken before such a date. All this happens during the process of invalidating a law or overruling a decision.

Golaknath Case and The Doctrine of Prospective Overruling

It was in the case of Golaknath v. State of Punjab , that the then Chief Justice Subba Rao had first invoked the doctrine of prospective overruling. He had taken import from American Law where Jurists like George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo had considered this doctrine to be an effective judicial tool. In the words of Canfield, the said

expression means:
"..... a court should recognize a duty to announce a new and better rule for future transactions whenever the court has reached the conviction that an old rule (as established by the precedents) is unsound even though feeling compelled by stare decisis to apply the old and condemned rule to the instant case and to transactions which had already taken place".

Taking cue from such formulation, Justice Subba Rao used this doctrine to preserve the constitutional validity of the Constitution (Seventeenth Amendment) Act, legality of which had been challenged. He drew protective cover offered by the doctrine over the impugned amendments while manifestly holding that the impugned amendments abridged the scope of fundamental rights. Justifying his stand, he held that:
What then is the effect of our conclusion on the instant case? Having regard to the history of the amendments, their impact on the social and economic affairs of our country and the chaotic situation that may be brought about by the sudden withdrawal at this stage of the amendments from the Constitution, we think that considerable judicial restraint is called for. We, therefore, declare that our decisions will not affect the validity of the constitution (Seventeenth Amendment) Act, 1964, or other amendments made to the Constitution taking away or abridging the fundamental rights. We further declare that in future Parliament will have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights.

He then went on to analyse the objections that had been laid down against the use of the doctrine of prospective overruling which are as under: 1) the doctrine involved legislation by courts; (2) it would not encourage parties to prefer appeals as they would not get any benefit therefrom; (3) the declaration for the future would only be obiter; (4) it is not a desirable change; and (5) the doctrine of retroactivity serves as a brake on courts which otherwise might be tempted to be so fascile in overruling.

Subba Rao J. discarded these objections as not insurmountable. He supported the legitimacy of the doctrine of prospective overruling and held that overruling as a concept included within its ambit the discretion to decide whether a particular decision will have retrospective effect or not. He further

added that what is being laid down cannot be considered to be obiter as what the court is doing in effect is to declare the law and by the use of a doctrine restrict its scope. This is strict legal sense may encompass making law but according to the Chief Justice, what is being done is to strike a pragmatic balance between the two conflicting considerations, which are, a court finds law and a court makes law.

Further, to buttress his point, he said that there is no statutory provision that in fact prevents or bars him from employing the doctrine. He says that courts in India have the inherent power to reject retroactivity of law when it affects vested rights. Similarly, he questions vehemently as to why in the judicial process, should one not recognize a principle of construction which tends to deviate from the principle of retrospectivity to judicial pronouncements where they entail a change in the law.

To further substantiate and justify his stand on the invoking the doctrine, he says that such a practice will not lead to a retrogression or a violation of the constitutional provisions. For this he says that the Indian Constitution does not expressly or by necessary implication speak against the doctrine of prospective over-ruling. Talking about Articles 32, 141 and 142, he says they are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon, he says, is reason, restraint and injustice. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice.

The expression "declared" is wider than the words "found or made" wherein the latter involves giving an opinion. He says that the power of the Supreme Court to declare law under Article 141 also inheres in it the power to declare that the law should have prospective effect only. He also says that the denial of this power to the most powerful instrument at the highest level, i.e., the Supreme Court on the basis of some passé theory is not a pragmatic thing to contemplate and the only consequence of this is going to be that the Supreme Court is going to be rendered impotent, thus being crippled of its power. In effect, what he means to say is that it was high time we recognised the potential of the evolution of new doctrines applicable to the prevailing

socio-economic milieu and not deny the power to do this by cloaking it with outdated theories which have rare application now. However, while doing this, since it was the first time this doctrine was being invoked, the Chief justice laid down the following principles of guidelines regarding the applicability of prospective overruling:
"As this court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions:
(1) the doctrine of prospective overruling can be invoked only in matters arising under our Constitution;
(2) it can be applied only by the highest court of the country, i.e., the Supreme Court, as it has the Constitutional jurisdiction to declare law binding on all the courts in India;
(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with he justice of the cause or matter before it."

Thus, this decision by Justice Subba Rao saw the dawn of the principle of prospective overruling in India. This principle has been invoked in other cases by the Supreme Court too and this will looked at in greater detail later in the project. This judgment by Subba Rao has been well received by some jurists who claim that the adoption of this doctrine is a realistic response to the awareness that the supreme appellate body in the country is capable of making laws. On the other hand, there has been some sort of criticism coming in to Justice Subba Rao's articulation of the above doctrine. All this will be considered hereon.

Thus, we see that Justice Subba Rao has tried to take a bold and imaginative step, challenging the very roots of traditional jurisprudence, in order to accommodate a smooth future which represents an acceptable working arrangement in the eyes of the Constitution with a past which has seen a major transformation in the economic, social and political structure since independence. The Chief Justice has contemplated this by holding that the amendments thus introduced will continue in effect. This can be inferred from his conclusion, where he states that the first, fourth and seventeenth amendments are 'valid' and 'hold the field', and therefore any acts passed

which were protected by these amendments 'cannot be questioned'. The effect of the decision is that from the 'date of the decision' the Parliament will have no power to make laws which would affect the fundamental rights.

3. Basic Structure Theory

That the Constitution has "basic features" was first theorised in 1964, by Justice J.R. Mudholkar in his dissent, in the case of *Sajjan Singh v. State of Rajasthan*. He wrote,

> It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368 ?"[6]

Supreme Court, through the decisive judgement of Justice H. R. Khanna in Keshavananda Bharti v. State of Kerala (1973) case, declared that the basic structure/features of the constitution is resting on the basic foundation of the constitution. The basic foundation of the constitution is the dignity and the freedom of its citizens which is of supreme importance and can not be destroyed by any legislation of the parliament.[7] The basic features of the Constitution have not been explicitly defined by the Judiciary. At least, 20 features have been described as "basic" or "essential" by the Courts in numerous cases, and have been incorporated in the basic structure. Only Judiciary decides the basic features of the Constitution. In *Indira Nehru Gandhi v. Raj Naraian* and also in the *Minerva Mills* case, it was observed that the claim of any particular feature of the Constitution to be a "basic" feature would be determined by the Court in each case that comes before it. Some of the features of the Constitution termed as "basic" are listed below:

1. Supremacy of the Constitution
2. Rule of law
3. The principle of separation of powers
4. The objectives specified in the preamble to the Constitution of India
5. Judicial review
6. Articles 32 and 226
7. Federalism (including financial liberty of states under Articles 282 and 293)
8. Secularism
9. The sovereign, democratic, republican structure
10. Freedom and dignity of the individual

11. Unity and integrity of the nation
12. The principle of equality, not every feature of equality, but the quintessence of equal justice;
13. The "essence" of other fundamental rights in Part III
14. The concept of social and economic justice — to build a welfare state: Part IV of the Constitution
15. The balance between fundamental rights and directive principles
16. The parliamentary system of government
17. The principle of free and fair elections
18. Limitations upon the amending power conferred by Article 368
19. Independence of the judiciary
20. Effective access to justice
21. Powers of the Supreme Court of India under Articles 32, 136, 141, 142
22. Legislation seeking to nullify the awards made in exercise of the judicial power of the state by arbitration tribunals constituted under an act[8]

Background[edit]

The Supreme Court's initial position on constitutional amendments was that no part of the Constitution was unamendable and that the Parliament might, by passing a Constitution Amendment Act in compliance with the requirements of article 368, amend any provision of the Constitution, including the Fundamental Rights and article 368. In *Shankari Prasad Singh Deo v. Union of India* (AIR. 1951 SC 458), the Supreme Court unanimously held, "The terms of article 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatever. In the context of article 13, "law" must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power, with the result that article 13 (2) does not affect amendments made under article 368. In *Sajjan Singh v. State of Rajasthan* (case citation: 1965 AIR 845, 1965 SCR (1) 933), by a majority of 3–2, the Supreme Court held, "When article 368 confers on Parliament the right to amend the Constitution, the power in question can be exercised over all the provisions of the Constitution. It would be unreasonable to hold that the word "Law" in article 13 (2) takes in Constitution Amendment Acts passed under article 368."[8] In both cases, the power to amend the rights had been upheld on the basis of Article 368.

Golaknath case[edit]

Main article: I.C. Golak Nath and Ors. vs. State of Punjab and Anr.

In 1967, the Supreme Court reversed its earlier decisions in *Golaknath v. State of Punjab*.[8] A bench of eleven judges (the largest ever at the time) of the Supreme Court deliberated as to whether any part of the Fundamental Rights provisions of the constitution could be revoked or limited by amendment of the constitution. The Supreme Court delivered its ruling, by a majority of 6-5 on 27 February 1967. The Court held that an amendment of the Constitution is a legislative process, and that an amendment under article 368 is "law" within the meaning of article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void. Article 13(2) reads, "The State shall not make any law which takes away or abridges the right conferred by this Part and any law made in contravention of this clause shall, to the extent of contravention, be void." The Court also ruled that Fundamental Rights included in Part III of the Constitution are given a "transcendental position" under the Constitution and are kept beyond the reach of Parliament. The Court also held that the scheme of the Constitution and the nature of the freedoms it granted incapacitated Parliament from modifying, restricting or impairing Fundamental Freedoms in Part III. Parliament passed the 24th Amendment in 1971 to abrogate the Supreme Court ruling in the Golaknath case. It amended the Constitution to provide expressly that Parliament has the power to amend any part of the Constitution including the provisions relating to Fundamental Rights. This was done by amending articles 13 and 368 to exclude amendments made under article 368, from article 13's prohibition of any law abridging or taking away any of the Fundamental Rights.[8] Chief Justice Koka Subba Rao writing for the majority held that:

•A law to amend the constitution is a law for the purposes of Article 13.
•Article 13 prevents the passing of laws which "take away or abridge" the Fundamental Rights provisions.
•Article 368 does not contain a power to amend the constitution but only a procedure.
•The power to amend comes from the normal legislative power of Parliament.
•Therefore, amendments which "take away or abridge" the Fundamental Rights provisions cannot be passed.

Kesavananda Bharati case (1973)[edit]

Main article: Kesavananda Bharati v. State of Kerala

Six years later in 1973, the largest ever Constitution Bench of 13 Judges, heard arguments in *Kesavananda Bharati v. State of Kerala* (case citation: AIR 1973 SC 1461). The Supreme Court reviewed the decision in Golaknath v.

State of Punjab, and considered the validity of the 24th, 25th, 26th and 29th Amendments. The Court held, by a margin of 7–6, that although no part of the constitution, including fundamental rights, was beyond the amending power of Parliament (thus overruling the 1967 case), the "basic structure of the Constitution could not be abrogated even by a constitutional amendment".[9] The decision of the Judges is complex, consisting of multiple opinions taking up one complete volume in the law reporter "Supreme Court Cases". The findings included the following:

•All of the Judges held that the 24th, 25th and 29th Amendments Acts are valid.
•Ten judges held that *Golak Nath*'s case was wrongly decided and that an amendment to the Constitution was not a "law" for the purposes of Article 13.
•Seven judges held that the power of amendment is plenary and can be used to amend all the articles of the constitution (including the Fundamental Rights).
•Seven judges held (six judges dissenting on this point) that "the power to amend does not include the power to alter the basic structure of the Constitution so as to change its identity".
•Seven judges held (two judges dissenting, one leaving this point open) that "there are no inherent or implied limitations on the power of amendment under Article 368".
Nine judges (including two dissenters) signed a statement of summary for the judgment that reads:

1.Golak Nath's case is over-ruled.
2.Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution.
3.The Constitution (Twenty-fourth Amendment) Act, 1971 is valid.
4.Section 2(a) and 2(b) of the Constitution (Twenty-fifth Amendment) Act, 1971 is valid.
5.The first part of section 3 of the Constitution (Twenty-fifth Amendment) Act, 1971 is valid. The second part namely "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" is invalid.
6.The Constitution (Twenty-ninth Amendment) Act, 1971 is valid.[8][10]
The ruling thus established the principle that the basic structure cannot be amended on the grounds that a power to amend is not a power to destroy.

Defining the basic structure[edit]

The majority had differing opinions on what the "basic structure" of the Constitution comprised

Chief Justice Sarv Mittra Sikri, writing for the majority, indicated that the basic structure consists of the following:

•The supremacy of the constitution.
•A republican and democratic system.
•The secular character of the Constitution.
•Maintenance of the separation of powers.
•The federal character of the Constitution.
Justices Shelat and Grover in their opinion added three features to the Chief Justice's list:

•The mandate to build a welfare state contained in the Directive Principles of State Policy.
•Maintenance of the unity and integrity of India.
•The sovereignty of the country.
Justices Hegde and Mukherjea, in their opinion, provided a separate and shorter list:

•The sovereignty of India.
•The democratic character of the polity.
•The unity of the country.
•Essential features of individual freedoms.
•The mandate to build a welfare state.
Justice Jaganmohan Reddy preferred to look at the preamble, stating that the basic features of the constitution were laid out by that part of the document, and thus could be represented by:

•A sovereign democratic republic.
•The provision of social, economic and political justice.
•Liberty of thought, expression, belief, faith and worship.
•Equality of status and opportunity.[11]

4. Maintenance to Muslim Divorced Women & Tripal Talaq

Introduction:-
Mohd. Ahmad Khan V/S Shah Bano Begum[1]is a landmark lawsuit which has

dealt with the problem of "Triple Talaq Verdict". This case is normally mentioned as "Shah Bano Case". It is considered to be a very debatable and problematic legal contest in India. This lawsuit has substantiated to be a milestone in the struggle of rights, freedom for the Muslim women.

It is all about Shah Bano fearless and valiant struggle against the system of Triple Talaq. Instead of creating a history or story of a suppressed women she faced the embarrassment's of the community and her husband. Even though she was facing such a drastic situation in her life she elected to struggled against her husband and faced the the world where everyone was in favor of her husband, and above all she bravely decided to fight against the male-dominated society. She fought against the system of Triple Talaq and at last her efforts not went in vain, she was able to achieve what she wanted and has altered the system eternally.

Facts:-
The facts of this case are given below:-
In 1932, Shah Bano was married to Mohd. Ahmad khan, who was a renowned lawyer in Indore.
They were the parents of 3 sons and 2 daughter i.e. in total they have 5 children.
After 14 yrs. Of their marriage Shah Bano's husband married another women who was younger than him.
In 1975, when Shah Bano age was of 62 yrs , she was disowned by her husband and was thrown out from her matrimonial home along with her children.
In April 1978, she brought a appeal under Sec. 125 of code of criminal procedure, 1973 (CrPC) in the presence of judicial magistrate of Indore after when she was thrown away from her matrimonial home by her husband.
Shah Bano filled this suit in 1978 because her husband has abandoned her from the maintenance of Rs. 200 per month which he guaranteed to give.
A wife who is without any income and is neglected by her husband is entitle to maintenance, which includes a divorced wife who is not remarried[2].
In Nov. 1978, he gave divorce to his wife Shah Bano by articulating or uttering "Triple Talaq and it was irrevocable.
The argument or conflict between Shah Bano's children and her husband's other wife were vital reason or grounds on which divorce was relinquished and furnished.
After he pronounce irrevocable Triple Talaq, he took a safeguard that since because of this divorce she has been terminated to be her legal wife and due to which he was not accountable to furnish her with maintenance or alimony.
The local court (magistrate) court directed Mohd. Ahmad to furnish her Rs.

25 per month to Shah Bano in a form of maintenance.
Shah Bano in July 1908, apart from this, made a plea to High Court of M.P, to alter the amount of maintenance to Rs. 179 every month.
Shah Bano's precedent went to Supreme Court and filled a petition against the verdict of High Court of Madhya Pradesh.
Her husband essential argument after divorce he cannot keep any form of alliance or connection with his divorce wife because it is not allowed by Islamic laws/Islam and is "Haram" & hence he is not legally responsible to maintain her wife.

Issues Raised In This Case:-
Whether Section 125 of the Code Of Criminal Procedure is concerned with Muslims or not.
Whether the amount of Mehr given by the husband on divorce is adequate to get the husband rid and is liable to maintain his wife or not.
whether Uniform Civil Code applies to all religions or not.

Judgement:-
The verdict of Shah Bano case was conveyed by C.J, CHANDRACHUD.
All India Muslim Personal Law Board and Jamiat ulema-e-Hind were the two Muslim Bodies accompanied the lawsuit as an intervenor.
On 3rdFeb. 1981, Supreme Court gave an like-minded conclusion in this case and banished the plea of Mohd. Ahmad Khan and validate the verdict of High Court.
The court held that Section 125[3]of Code Of Criminal Procedure solicited to Muslims too, without any sought of discrimination.
Supreme Court in this case duly held that, since responsibility of Muslim husband towards her divorced wife is limited to the extent of " Iddat" period , even though this situation does not contemplates the rule of law that is mentioned in Section 125 of CrPc.,1973[4]
According to Supreme Court this rule according to Muslim Law was against humanity or was wrong because here a divorced wife was not in a condition to maintain herself.
Thus at the end, after very long procedure court finally concluded that the husband is legal liability will come to an end if divorced wife is competent to maintain herself.
But this situation will be reversed in the case when wife is not able in a condition to to finance or maintain herself after the Iddat period, she will be entitle to receive maintenance or alimony under Section 125ofCrPc.

Muslim Women (Protection Of Rights On Divorce) Act, 1986:-
The judgement given in Shah Bano Case was criticized among Muslims and according to them this decision was in conflict with the rules of "Quran" and

"Islamic Laws/ Islam". So Parliament of India in 1986, (Congress govt.) decided to enact the Muslim women (Protection Of Rights Of Divorce) Act, 1986. The main objective of this act was to protect the right of the divorced Muslim women and or to those who have got divorce from their husband's.

The enactment of this act was done by government of Rajiv Gandhi, to invalidate the decision/decree passed by Supreme Court in Shah Bano Begum Case. According to this act, Muslim divorced women should be entitle to adequate and reasonable amount of maintenance till the Iddat period. When a divorced women maintains a child born by her anytime before or after the divorce, the husband is under legal obligation to provide a certain amount of maintenance for the child to a period of 2 yrs. From the birth date of a child. The women is also authorized to obtain "Mahr" or "dower" and receive back all the properties or estate which is provided to her by her parents, friends, relatives, husband or husband's friends. If such advantages are not received by the divorced Muslim women from her former husband, she can apply to magistrate for ordering him to provide her with maintenance/alimony or amount of "Mahr" or dower or her estate or properties[5].

Critical Analysis:-
In the case of Mohd. Ahmad Khan V/S Shah Bano Begum, the Supreme Court specifically underlined the that Triple Talaq cannot take away the maintenance right of a divorced Muslim women who is not in a condition to maintain herself or her children when she is disowned or divorced by her husband. The period when the verdict of Shah Bano Case was delivered by the Supreme Court it faced a lot of criticism. At that point of time Muslim women weather married or unmarried were not given freedom even they were debarred from there basic freedom, which is against humanity and it basically violates the basic or fundamental rights of humans. Muslim women were backward in there status as compared to other women of the world. They were not educated and self-reliant as compared to other women. They faced serious issues and problems which led to the decrease in their level of self-confidence and their knowledge in various sects. Along with these things they were not allowed to study or educate themselves and they were also denied to work either. Since they faced all these things from their very childhood it was very natural that they in their difficult time cannot earn their living and can maintain themselves so for them alimony or maintenance was much needed.

Shah Bano case was a normal case just like other cases of maintenance which has taken place and also the verdict that was concluded by Supreme Court was also similar to the previous lawsuits but the two naked truth that

was witnessed in this case made this case a landmark judgement case and the two naked truth was- firstly, spirituality of religious personal laws was criticized and then it was questioned whether Uniform Civil Code is applied to all religion and their followers and secondly, whether CrPc is applied to personal religious laws.

Conclusion:-
This was the case of a Triple Talaq verdict which according to me was a historic verdict as it maintains the truth and faith of the people in the judiciary as in this case, "Justice and equality has overcome religion". According to me this lawsuit was milestone in judiciary as it was courageous, bold, impartial and unique decision. This judgement has marked the importance of maintenance which should be provided to the divorced Muslim women who are not in the condition to earn and maintain themselves.

Even though the verdict of Shah Bano case given by the Supreme Court was invalidate by the endorsement of Muslim Women Ac[6]t, the court held in further verdict's that divorced Muslim. women, under Section 125 of CrPc can affirm maintenance or alimony from their former husband, or apart from this divorced Muslim women can assert or claim for round some money or amount under Muslim Women Act. The Supreme Court even though after dirty politics passed the judgement that was impartial and at last it had maintained the trust and faith of citizens in judiciary.

Background

Section 125(1) of the Criminal Procedure Code deals with answers to the question as to “Who can Claim Maintenance?”

1.Wife from his husband,

2.Legitimate or illegitimate minor child from his father,

3.Legitimate or illegitimate minor child (physical or mental abnormality) from his father, &

4.Father or mother from his son or daughter.

Essentials conditions for granting maintenance include the following points:

1.Sufficient means for maintenance are available (person who has to give the maintenance should have means to give the same).

2.Neglect or refusal to maintain after the demand for maintenance (if the person defaults or omits to provide maintenance or if he denies his obligation of maintaining then it amounts to neglect or refusal respectively).

3.The person claiming maintenance must be unable to maintain himself/herself (only if the person is unable to maintain themselves).

4.Quantum of maintenance (depends on the standard of living).

Facts of the Case

Mohd Ahmed Khan (the appealing party) who was a lawyer by profession, married to Shah Bano Begum (the respondent) in 1932, had three sons and two daughters from this marriage. In 1975, when Shah Bano's age was 62 years, she was disowned by her spouse and was tossed out from her marital home together with her children. In 1978, she filed an appeal in the presence of Judicial Magistrate of Indore, because she was abandoned from the maintenance of Rs. 200 per month, which was guaranteed to be provided by him. She demanded Rs. 500 per month as maintenance. Subsequently, the husband gave her irrevocable triple talaq on November 6th, 1978, and used it as a defence to not pay maintenance. The magistrate, in August 1979, directed the husband to pay an entirety of Rs 25 per month as maintenance. Shah Bano in July 1908 made a plea to the High Court of M.P, to change the sum of maintenance to Rs. 179 each month, and high court increased the maintenance to the said amount i.e. Rs. 179 per month. The same was challenged by the spouse within the Supreme Court as a special leave petition to the High court's decision.

Issues

1.Criminal Procedure Code (II of 1974), Section 125. Whether the "WIFE" definition includes a divorced Muslim woman?

2.Criminal Procedure Code (II of 1974), Section 125. Whether it overrides personal law?

3.Criminal Procedure Code (II of 1974), Section 125. Whether a Muslim husband's obligation to provide maintenance for a

divorced wife is in or not in the conflict between section 125 and Muslim Personal Law?

4.Criminal Procedure Code (II of 1974), Section 127(3) (b). What is the sum payable on divorce? The meaning of Mehar or dower is not summed payable on divorce?

Judgment

•The verdict was given by C.J, Y.C Chandrachud, and the appeal of Mohd. Ahmed Khan was dismissed.

•Supreme Court said Section of the code applies to all citizens independent of their religion and consequently Section 125(3) of Code of Criminal Procedure is pertinent to Muslims as well, without any sort of discrimination. The court further stated that Section 125 overrides the personal law if there is any conflict between the two It makes clear that there's no strife between the provisions of Section 125 and those of the Muslim Personal Law on the address of the Muslim husband's obligation to provide maintenance for a divorced wife who is incapable to maintain herself.

•Supreme Court in this case duly held that since the obligation of Muslim husband towards her divorced wife is restricted to the degree of " Iddat" period, indeed though this circumstance does not contemplate the rule of law that's said in Section 125 of CrPc., 1973 and subsequently the obligation of the husband to pay maintenance to the wife extends beyond the iddat period in the event that the wife does not have sufficient means to maintain herself. It was further stated by the court that this rule according to Muslim Law was against humanity or was wrong because here a divorced wife was not in a condition to maintain herself.

•The payment of Mehar by the husband on divorce is not sufficient to exempt him from the duty to pay maintenance to the wife.

•After a long court procedure, the Supreme Court finally concluded that the husbands' legal liability will come to an end if a divorced wife is competent to maintain herself. But this situation will be switched in the case when the wife isn't able in a condition to maintain herself after the Iddat period, she will be entitled to get maintenance or alimony under Section 125 of CrPC.

Case laws Stated

1. Fuzlunbi Versus K. Khader Vali and another [(1980) 4 S.C.C. 125]
2. Bai Tahira V. Ali Hussain Fissali Chothia & ANR. [(1979) 2 S.C.C. 316]
3. Nanak Chand V. Chandra Kishore Aggarwal & others [A.I.R. 1970 S.C. 446]
4. Mst Jagir Kaur & ANR V. Jaswant Singh [A.I.R. 1963 S.C. 1521]
5. Hamira Bibi v. Zubaida Bibi [A.I.R. 1916 P.C. 46]
6. SyedSabir Husain v. Farzand Hasan [A.I.R. 1938 P.C. 80.]

Reasoning

- **Either Section 125 of the Code applies to Muslims and does the "WIFE" definition includes a divorced Muslim woman or not?**

The SC after referring to Section 125 of CrPC said that "*The religion professed by a spouse or by the spouses has no place within the scheme of these provisions. It would be irrelevant within the application of these provisions if the spouses are Hindus, Muslims, Christians, Parsis, pagans, or heathens. The rationale for this can be self-evident, in the sense that Section 125 is a part of the CrPC, not of the Civil Laws which define and govern the rights and commitments of the parties belonging to specific, religions, similar to the Hindu Adoptions and Maintenance Act, the Shariat, or the Parsi Matrimonial Act. Section 125 was enacted to provide a fast and summary remedy to a category of persons who are unable to maintain themselves…*" (Para 7)

"*Clause (b) which is the Explanation to section 125(1), which defines 'WIFE' as including a divorced wife, contains no words of limitation to justify the exclusion of Muslim women from its scope. Section 125 is truly secular in character.*" (Para 7)

Hence, the code applies to any or all religions including Muslims.

Para 9 of the judgment asserts that "'*Wife' means a wife as defined, irrespective of the religion professed by her or by her husband. Therefore, a divorced Muslim woman, unless remarried, is a 'wife' under section 125 of the code. The statutory right available to her under it is unaffected by the provisions of the personal law applicable to her.*"

This clears the very fact that "Wife" includes divorced women too.

•Either Section 125 of CrPC overrides personal law or not?

The Court in replying to the present question gave the illustration of the Islamic Law concerning polygamy: It is too well-known that "*A Mahomedan may have as many as four wives at the same time but not more. If he marries a fifth wife when he has already four, the marriage isn't void, but is irregular*". Subsequently, the court stated "*The explanation confers upon the wife the right to refuse to live together with her husband if he contracts another marriage, leave alone three or four other marriages. It shows, indubitably, that* ***section 125 overrides the personal law*** *if is any there conflict between the two."*

•Is there's any disagreement between the provisions of Section 125 and those of the Muslim Personal Law on the liability of the Muslim husband to provide for the maintenance of his divorced wife?

Answering this proposition court stated- "*The argument of the appellant that, according to the Muslim Personal Law, his liability to provide for the maintenance of his divorced wife is prescribed only to the period of iddat, even if she is unable to maintain herself, has, therefore, to be rejected. The true position is that, if the divorced wife can maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat. If she is unable to maintain herself, she is entitled to take recourse to section 125 of the CrPC. The result of this discourse is that there's no strife between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's commitment to providing maintenance for a divorced spouse who is unable to maintain herself."*

•Is the payment of Mehar by the husband on divorce is adequate enough to exculpate him of any obligation to pay maintenance to the wife?

Quoting the ruling given in Bai Tahira where Justice Krishna Iyer held that "*... The payment of illusory amounts (referring to 'Mehar') by way of customary or personal law requirement is to be considered within the reduction of maintenance rate but cannot annihilate that rate unless it's a reasonable substitute."* (p.82, Bai Tahira), the SC in this case held "*...there is no escape from the conclusion that a divorced Muslim wife is entitled to apply for*

maintenance under section 125 and that, Mehar isn't a sum which, under the Muslim Personal Law, is payable on divorce."

Aftermath

Article 44 of the Directive Principles in the Constitution, directs the state to provide for its citizens a Uniform Civil Code throughout the territory of India. C.J Chandrachud while giving judgment stated the need to implement the same. He said "A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. A beginning has to be made if the Constitution is to have any meaning." This simulated the debate on the Uniform Civil Code in India.

Shah Bano's case judgment was criticized by many Muslims especially Muslim scholars. They considered this decision in conflict with the rules of the Quran and Islamic Laws/Islam. Subsequently, the Parliament of India in 1986 decided to enact the Muslim Women (Protection Of Rights Of Divorce) Act, 1986. Protecting the rights of the divorced Muslim Women and or those who have got divorced from their husbands, were the main objective of this act. Under this act:

- Muslim divorced women ought to be entitled to an adequate and reasonable sum of maintenance till the Iddat period.
- When a divorced woman keeps up a child born by her anytime, sometime recently or after the divorce, the spouse is under a legal obligation to supply a certain whole of maintenance for the child to a period of 2 yrs.
- From the birth date of a child. The women are also authorized to get "Mehar" or "dower" and get back all the properties or estate which is given to her by her guardians, companions, relatives, husband, or husband's friends.

Conclusion

Though the court took a long time the decision of rejecting the appeal is very historic because it keeps up the truth and faith of the individuals in the judiciary. This judgment has marked the significance of maintenance which ought to be given to the divorced Muslim women who are not in the condition to earn and maintain themselves. The Shah Bano judgment pulled in a lot of

opposition with authoritative bodies being against the decision for the reason of it being against the provisions of Islamic law, but SC passed the impartial judgment and at last, it had maintained the trust and faith of citizens in the judiciary. This lead to enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which given Muslim women receiving a huge, one-time payment from their husbands amid the period of Iddat, instead of a maximum month to month payment of ₹500 – an upper limit which has since been expelled.

Danial Latifi v. Union Of India

The events mentioned earlier caused a massive fury among the Muslim community. The threat was so significant that it had the potential to shake the whole politics. A minister had also said that it could have far-reaching complications on Rajiv Gandhi's government. Therefore, to secure his chair and gain popularity among the Muslim community, his government has passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act nullified the effect of Shah Bano's judgment.

Section 3 of the Act provides for the provision and maintenance to the Muslim woman given at a time of divorce. The said provision obligates the husband for "a reasonable and fair provision and maintenance to be made and paid within the iddat period." The term reasonable and fair provision and maintenance signify that the maintenance can vary on a case-to-case basis and was open to judicial interpretation. The Act restricted the right of maintenance to Muslim women 'by her husband' until the iddat period only.

If the woman has not remarried after the iddat period and cannot maintain herself, she cannot seek maintenance from her former husband. Under Section 4 of the Act, the Magistrate is only authorized to order her relative, who would inherit her property, to pay reasonable and fair maintenance to the woman. If she has no relatives or does not have a relative who has the capacity to pay, the Magistrate may order the State Wakf Board to pay the required maintenance to the woman.

Danial Latifi V Union Of India

The constitutionality of the Act was challenged in Danial Latifi. It was contended by the petitioners that the Act was less beneficial than Sections

125-128 of the CrPC. Further, it unreasonably discriminated against Muslim divorced woman and violated their rights under Articles 14, 15, and 21 of the Constitution. Also, it sought to nullify the SC's decision in Shah Bano.

However, the SC upheld the constitutional validity of the Act. It held that there is no discrimination when the state has made a specific provision for a particular community that is equally or more beneficial than the general law. The Act does not nullify or go against the ratio decidendi of the Shah Bano but merely codifies it.

Disputable Issues

What about secularism?

The purpose of the inclusion of Section 125 was to prevent destitution and provide quick maintenance to women. The section is secular in nature and protects all women in general from vagrancy. Further, the SC in Shah Bano held that Section 125 could be used by any divorced woman against her husband for maintenance. It also chastised the government for delay in implementing the uniform civil code. The broad interpretation given to Section 125 could be regarded as a move towards achieving Article 44, Uniform Civil Code (UCC) which is a Directive Principle of State Policy (DPSP).

However, the Act put a restraint on the way towards UCC. Further, the court in Danial Latifi accepted its validity. The court did not adhere to the rulings in Shah Bano. From time to time, courts in India held the need for UCC. The drafters of the Constitution hoped that the government would try to implement UCC in the whole country and thus included it in the Directive Principles of the State Policy. Further, the courts in various instances held Goa as the "shining example" of UCC.

However, there are no fruitful attempts. Section 125 of the CrPC could have been one; however, it was overthrown by the Act. Instead of invalidating the Act due to its deviation from the secular nature, the court upheld its validity. The author argues that the court in Danial Latifi should have viewed the Act in contradiction to the expectations of the drafters of the constitution and secularism, which forms a part of the basic structure doctrine.

Consequently, it should have been declared unconstitutional, violating the basic structure doctrine.

Further, the court has failed to answer the necessity of the Act. Having a secular provision should be enough. All communities are similarly treated under Section 125. However, the court did not clarify the need for the new provision, mainly for Muslim divorced women.

Why Undue Burden On Relatives And Wakf Board?

Section 3 of the Act provides "a reasonable and fair provision and maintenance to be made and paid within the iddat period." Section 4(1) of the Act authorizes the Magistrate to order the woman's relatives to pay her maintenance. Section 4(2) of the Act says if relatives are not capable enough, the Magistrate can order the State Wakf Board to pay maintenance to the woman.

The Court did not answer why the relatives, who are strangers to the matrimonial relations, should be obliged to pay the maintenance. It cannot be said that those relatives would inherit the property of the woman. There are high chances that a woman does not have any property. In such cases, relatives would not take the burden of maintenance willingly. Then it would be unjustified on the part of the magistrate to order relatives for the maintenance in such a case. The Bangladesh High Court in Hezfur Rahman v Shamsun Nahar Begum held that 'it is the husband' who is liable to maintain his divorced wife beyond the iddat period. She should be reasonably maintained by her husband for an indefinite term or till she re-marries again. A woman sacrifices her career, her desires, and her sources of income in light of her 'stridharma' 'for her husband and not for relatives'. She leaves behind her property and loses earning opportunities 'by being married'. The position of wife in marriage is held vulnerable by virtue of being married. Therefore, for the forgone opportunities of the wife and the work during her marriage, the husband should be held obliged to adequately compensate her and not her relatives.

In Tamil Nadu State Wakf Board v Syed Fatima Nochi, it was contended by the Wakf Board that the ministry has not asked to create a separate fund for maintenance to the Muslim divorced women. Further, no specific guidelines were issued in this regard. However, the court compelled the Wakf board to

pay the requisite maintenance. Fortunately, the Wakf board had the required amount to pay the maintenance in the case mentioned above. What if the Wakf board did not have the required amount? Can it be compelled to pay the maintenance in that case also? It would not be right to order a board that has no relation to the matrimonial arrangement between a husband and wife.

Cannot Ignore Prevailing Circumstances And History:-

The Court in Danial Latifi held that it could not look upon the legislature's intention while it frames law. The court said that framing of rules and regulations is the core area of the legislature.

However, the Court should not overlook the politically motivated objectives of the legislature during the enactment of any legislation. The Court should look at both the history and the intention of the parliamentarians before interpreting any law. A law cannot be interpreted in closed walls without taking into consideration the context in which it was passed.

The US SC in Village of Arlington Heights v Metropolitan Housing Development Corporation held that "sequence of events leading up to the challenged decisions, the legislative or administrative history and in extraordinary cases, may even summon individual legislators to testify concerning the purpose of the official action." It is clear that if the circumstances are required, the court should look to the context in which the law was passed.

There were numerous instances of violence after the Shah Bano judgment. Further, some ministers in Rajiv Gandhi government directly said that something needs to be done to appease the Muslim community to secure their majority mandate. Therefore, the court could have looked at the intention of the parliament behind the enactment of the Act in Danial Latifi and could judge accordingly.

Conclusion

the court has overlooked specific contentious issues in Danial Latifi. It has deviated itself from the ratio given in Shah Bano. While upholding the validity of the Act, the court failed to consider why Section 125, which is a step towards achieving UCC in the country, should not have primacy over any other personal law. Further, it has not justified why the relatives and Wakf board should be obliged to maintain women and not her husband. The court has also overlooked the intention of the parliament behind the Act and prevailing circumstances going on in the country at that time. If the court would have considered the above contentions, the judgment could have been different.

Uniform Civil Code

Smt.Sarla Mudgal,President, Kalyani v/s Union of India, 1995 AIR 1531

This case is considered as a landmark judgement by the Supreme Court. The Practice of changing one's religion to have a 2nd marriage without dissolving the first marriage was held to be invalid. As it was against justice, equity and good conscience. Conversion from one faith to another doesn't dissolve the marriage of an individual. The marriage can only be dissolved by decree of divorce obtained by the competent court on any of the ground under Section 13 of the Hindu Marriage Act, 1955. The court also declared that if a person is found guilty then he will be charged under Section 494 of the Indian Penal Code, 1860 for bigamy.

In India there is no uniform civil code applicable to all its citizens. Every citizen is governed by his or her own personal law. Justice Kuldip Singh requested the Government to look into Article 44 of the Constitution and to secure its citizen a uniform code.

Smt.Sarla Mudgal, President, Kalyani and Others v. Union of India and Others, 1995 AIR 1531
Citation: 1995 AIR 1531 - Case Number: W.P.(C) No.-001079-001079 / 1989
Diary number as per SC record: 71644 / 1989
Name of the Petitioner: Smt. Sarla Mudgal, President, Kalyani and Others v/s
Name of the Defendant: Union of India and Others
Counsel for the Petitioner: S. Janani v/s Counsel for the Defendant: P. Parmeswaran
Bench: Justice Kuldip Singh and Justice R.M.Sahai
Court: The Supreme Court of India - Decided on: 10 May 1995

Facts of the Case
Four petitions were filed under Article 32 of the Constitution

•Petitioner 1 (Writ Petition 1079/89) is the President of an organisation 'KALYANI' (works for the welfare of families in need and women). There is a second petitioner Meena Mathur who married Jitender Mathur on 27 February 1978. They have 2 sons and a daughter together. In early 1988, the petitioner learned that her husband had solemnised a second marriage with Sunita Narula alias Fathima by converting to Islam.

•Petitioner 2 (Writ Petition 347 of 1990) is Sunita Narula alias Fatima. She had converted to Islam to marry Jitender Mathur and a child had been born out of wedlock. Under the influence of his first wife, Jitender converted back to Hinduism. Sunita continued to be a Muslim, therefore she was not being maintained by her husband and had no protection under either of the personal laws.

•Petitioner 3 (Writ Petition 424 of 1992) is Geeta Rani. She had married Pradeep Kumar as per Hindu rites on November 13, 1988. In December 1991, the petitioner learnt that Pradeep Kumar ran away to marry Deepa after converting to Islam. During the marriage, her husband used to maltreat her and on one occasion had broken her jaw.

•Petitioner 4 (Civil Writ Petition 509 of 1992) is Sushmita Ghosh. She had married G.C. Ghosh as per Hindu rites on May 10, 1984. On April 20, 1992, her husband asked her for a divorce by mutual consent. He revealed that he had converted to Islam and would marry a lady named Vinita Gupta.

Contention of the Petitioners:

1.Petitioner 1- Conversion of her husband to Islam was only for the purpose of marrying Sunita and he is by-passing the provisions of Section 494, IPC. Jitender Mathur on the other hand asserted that having embraced Islam, he can have four wives irrespective of the fact that his first wife continued to be a Hindu.

2.Petitioner 2- Sunita Narula alias Fathima contended that after her husband Jitender converted back to Hinduism she continued to be Muslim and therefore is not being maintained by her husband and has no protection under either of the personal laws.

3.Petitioner 3- Geeta Rani pleaded that the conversion to Islam by her husband was only to facilitate the second marriage with Deepa.

4.Petitioner 4- Sushmita Ghosh in her writ petition, prayed that her husband should be restrained from entering into a second marriage with Vinita Gupta.

Facts in Issue:

•Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage?

•Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?

•Whether the apostate husband would be quilty of the offence under Section 494 of the Indian Penal Code (IPC)?

Article and Acts Referred:

•Article 25 of the Indian Constitution (Religious freedom)

•Article 44 of the Indian Constitution (Uniform Civil Code)

•Section 494 of the Indian Penal Code, 1860 (Marrying again during lifetime of husband or wife)

•Section 4 of the Hindu Marriage Act, 1955 (Overriding effect of Act)

•Section 11 of the Hindu Marriage Act, 1955 (Void marriages)

•Section 13 of the Hindu Marriage Act, 1955 (Divorce)

•Section 15 of the Hindu Marriage Act, 1955 (Divorced persons when may marry again)

•Section 4 of the Dissolution of Muslim Marriages Act (VIII of 1939) (Effect of conversion to another faith)

- •Section 17 of Special Marriage Act, 1954 (Appeals from orders under section 16)
- •Section 2 of Shariat Act (Act XXVI of 1937) (Application of Personal law to Muslim)

Bigamy: Section 494 of the Indian Penal Code,

Section 494 Indian Penal Code is as under:
"Marrying again during lifetime of husband or wife. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Exceptions to whom this section does not apply:

- •Any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction.
- •Any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years and have not been heard to be alive.

The necessary ingredients of the Section are:

1.having a husband or wife living;

2.marries in any case;

3.in which such marriage is void;

4.by reason of its taking place during the life of such husband or wife.

To prove the offence of Bigamy by the husband, the prosecution (first wife) has to prove that the second marriage of the husband was valid. There is no limitation period for taking cognizance of the offence of bigamy. A party can file a case under section 494 when they are made aware of such marriage.

The Kerala High Court in Venugopal K. v. Union of India, W.P.(C). No. 4559 of 2015 held that Section 494 IPC does not discriminate between Hindu/Muslim/Christian and can be proceeded against any citizen who

commits the offence of bigamy irrespective of his/her personal law, provided that ingredients of Section 494 are made out.

Court's View
Marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilisation can exist.

In India, there has never been a matrimonial law of general application. Apart from statute law such as the Hindu Marriage Act, 1955 and Muslim Personal Law (Shariat) Application Act, 1937 a marriage is governed by the personal law of the parties. A marriage that has been solemnised under a particular statute and according to personal law could not be dissolved according to another personal law, simply because one of the parties had changed his or her religion.

From the provisions of the Hindu Marriage Act, 1955 we can conclude that that the modern Hindu Law strictly enforces monogamy. A marriage performed under the Act cannot be dissolved except on the grounds available under section 13 of the Act. The second marriage of a Hindu husband after embracing Islam is in violation of justice, equity and good conscience. A Hindu husband, after embracing Islam, cannot solemnise a second marriage without dissolving the first marriage.

Therefore, the second marriage of a Hindu- husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid.

The second marriage would be void in terms of the provisions of Section 494 IPC. The expression "void" under section 494, IPC has been used in the wider sense. As a marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494, IPC. All the four ingredients of Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again.

Therefore, the said marriage is void by reason of its taking place during the life of the first wife.

The apostate-husband would be guilty of the offence under Section 494 IPC. The second marriage of an apostate would, therefore, be illegal marriage qua his wife who married him under the Act and continues to be Hindu.

Cases Discussed in the Judgement:

- •Andal Vaidyanathan vs. Abdul Allam Vaidya 1964 Bombay Law Reporter 864
- •Emperor vs. Mt. Ruri AIR 1919 Lahore 389.
- •Gul Mohammed v. Emperor AIR 1947 Nagpur 121.
- •Mohd. Ahmed Khan vs. Shah Bano Begum AIR 1985 SC 945.
- •Ms. Jordan Diengdeh vs. S.S. Chopra AIR 1985 SC 935 O.
- •Muhammad Raza v. Abbas Bandi Bibi 2002 (2) ALD Cri 116.
- •Nandi @ Zainab vs. The Crown ILR 1920 Lahore 440.
- •Ram Kumari in Budansa vs. Fatima 1914 IC 697.
- •Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864.
- •Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah 49 CWN 745.

Guidelines of Prevention of Sexual Harassment to women at working place Visakha v. State of Rajasthan (AIR 1997 SC 3011

The Vishaka guidelines (1997) [5]

EMPLOYER'S OR OTHER EQUIVALENT AUTHORITY'S DUTY– Employer or other responsible persons are bound to preclude such indecent incidents of sexual harassment from happening. In case such an act takes place, then the

organization must consist of a mechanism to provide prosecutorial and conciliatory remedies.

DEFINITION – For this purpose "*Sexual Harassment*" means disagreeable sexually determined behavior direct or indirect as-

Physical contact and advances;

A demand or request for sexual favours;

Sexually coloured remarks;

Showing pornography;

Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

MEASURES FOR PREVENTION– Employers or persons in charge of the workplace must take preventive measures such as an express prohibition of sexual harassment in the form of notifications or circulars, penalties by the government against the offender, appropriate work conditions in respect of hygiene, health and leisure.

PROCEEDINGS IN CASE OF MISCONDUCT– If the offenses committed are the ones that fall under the purview of the Indian Penal Code, 1860, then the employer is bound to take prosecutorial action by complaining to the appropriate authority.

APPROPRIATE DISCIPLINARY ACTION– If there is an occurrence of the violation of service rules, appropriate disciplinary action must be taken.

REDRESSAL MECHANISM– An organization must have a redressal mechanism to address the complaints. This must be irrespective of the fact that whether the act constitutes an offense under the Indian Penal Code, 1860, or any other law as such.

REDRESSAL COMMITTEE– Such a redressal mechanism or more precisely such a complaint committee must have women as more than half of its members and its head must be a woman. The committee must comprise of a counseling facility. It is also acceptable to collaborate with NGOs or any such organisations which are well aware of such issues. A report must be sent to

the government annually on the development of the issues being dealt by the committee.

SPREADING AWARENESS– To raise sexual harassment issues, employer-employee meetings must be held. The employer must take appropriate actions/measures to spread awareness on the said issue.

Critical analysis

Through the *Vishaka* Case, the Hon'ble Supreme Court of India took a great step towards the empowerment of women by issuing guidelines to curb sexual harassment at Workplace. The Hon'ble court took reference from various international conventions and laws in the absence of domestic law, then connected it to the law of the land and gave birth to a new law altogether. The efforts put in by the Indian judiciary, in this particular case to safeguard women is commendable. The Hon'ble Court through the *Vishaka Guidelines* provided a strong legal-platform for all the women to fight against sexual harassment boldly. The *Vishaka* case changed the outlook towards sexual harassment cases as serious issues, unlike the past when such cases were looked upon as petty matters.

Like every coin has its two sides, based on the *Vishaka* case, one can figure out that though India tried to overcome the social evils of gender inequality and sexual harassment by providing employment and provisions of law, it did not succeed in taking social responsibility for an equally safe working environment. Even after having the law on our side to safeguard women, there are many incidents of sexual harassment taking place regularly which get unreported.

As a small example, let us assume that a woman finally gets her dream job in a software company. The woman is subjected to sexual harassment due to some reason. She wants to go and lodge a complaint against the one who harassed her, but she chooses not to do it. She is worried that if she complains, then she might not be able to continue working in the company because her family members might stop her. Why? Cause the family fears that the woman has been harassed once, so she might be harassed again. The concern of people even today is that the female of their house must learn to adjust until she is in a "safe" environment according to their parameters. Not that the person who harassed her must be punished for

what he has done and to see to it that he does not repeat it. Though there are remedies available with the law, for women facing sexual harassment at Workplace, the “safety” is not assured even after so many years.

FOOD FOR THOUGHT: *There is a need for various Guidelines and an Act just to safeguard women on the working front. Why is it so hard for a woman to achieve the same freedom and opportunities that a man gets with not much of an effort?*

Conclusion

The constitutional principles of equality and liberty have been upheld by the Hon’ble Supreme Court of India in the *Vishaka* Judgement. The inception of the law against sexual harassment has inspired many women to raise their voices against the suffering that they were silently subjected to until the year 1997. *Vishaka* Guidelines formed the basis for the establishment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The true spirit of Judicial Activism has been portrayed in the *Vishaka* Judgement and it has been an inspiration to other nations. However, Bhanwari Devi, the spark that ignited the need for appropriate legislation to safeguard women against sexual harassment, even after two decades, is still awaiting justice to be served. It is paramount to take note of the fact that, though such comprehensive laws have been enacted to safeguard women in India, it still ranks as the most dangerous country for women. Maybe it is time to question ourselves, is it the law or is it us that must be responsible?

Principle of Absolute Liability

Oleum gas leak case – a case study

Introduction

The Oleum Gas Leak incident being similar in nature brought back the horrors of the Bhopal gas disaster, as a large number of people including both working people and the public were affected only after one year of the Bhopal gas tragedy and was closely monitored as an example as to how the courts should deal with companies accountable for environmental disasters.

The complicated legal proceedings around the Bhopal Gas Tragedy is sadly an example of what should not be done in this situation.

Oleum gas from Shriram Foods and Fertilizers which was a fertilizer plant leaked causing harm to numerous people. The Ryland v. Fletcher rule was applied in this case. J. Bhagwati stated that the above rule has been 100 years old and is not enough to decide cases such as these, as science has improved a lot in these years, which is why the Supreme Court went a little further and implemented the absolute liability rule.

In the centre of a population of 200,000 people in the area of Kirti Nagar, Shriram's Food and Fertiliser factory, Delhi was situated, which produced products like hard technical oil and glycerin soaps. M.C. Mehta, a social activist lawyer, submitted before the Supreme Court a writ petition seeking an order for closure and relocation of the Shriram Caustic Chlorine and Sulphuric Acid Plant to an area where no real danger to the people's health and security will exist. Pending disposal of the petition, the Supreme Court allowed the plant to restart its capacity and work. On 4 and 6 December 1985, Oleum gas leaked from one of its units during the pending lawsuit, causing substantial harm to local residents as a result of the plant's gas leakage.

As stated by the petitioner, a lawyer who practised in the Tis Hazari Courts also died as a result of oleum gas inhalation. As a result of the collapse of the structure on which it was built, the leakage resulted from the bursting of the tank containing oleum gas, and it generated fear among the citizens residing there. The people had hardly recovered from the shock of this tragedy when, within two days, another leakage occurred, though this time a minor one, due to the escape of oleum gas from a pipe's joints, after which the claims for compensation were filed, for the people who had suffered damage as a result of Oleum Gas escape, by the Delhi Legal Aid & Advice Board and the Delhi Bar Association.

The Delhi administrations immediate response to these two leaks was to issue an order dated 6th December 1985 by the Delhi Magistrate, in accordance to sub-section(1) of Section 133 of the Code of Criminal Procedure, ordering and requiring Shriram to cease the occupation of manufacturing and processing of dangerous and lethal chemicals and gasses, including chlorine, Oleum, Super Chlorine, phosphate, etc. at their facility in Delhi and to remove such chemicals and gasses from the facility

within 7 days and to refrain from storing them in the same place again or to appear in the District Magistrate Court on 17 December 1985, to show cause as to why this order should not be enforced.

The Supreme Court held that the case should be referred to a larger bench because the questions raised involve substantial law issues relating to the interpretation of Articles 21 and 32 of the Constitution. In order to assess whether a writ in conjunction with compensation could be awarded, the court had to interpret Article 32. In relation to the private companies Article 21, which establishes the right to protect life and freedom, was also to be interpreted as being essential in the public interest.

Issues

The oleum gas leak case led to various issues to come into the light, which was:

- Whether these harmful industries should be permitted to operate in these areas?
- Whether a regulating mechanism should be established if they are permitted to function in such areas?
- How should the liability and amount of compensation be determined in such cases?
- How does Article 32 of the Constitution extend in these cases?
- Whether the rule of Absolute Liability or Ryland v Fletcher is to be followed?
- Whether 'Shriram' could be considered to be a 'State' within the ambit of Article 12?

Judgment

Showing extreme concerns for the safety of the people of Delhi from the leakage of hazardous chemicals, J. Bhagwati stated the proposal to eliminate toxic and hazardous factories could not be followed because they still contribute to improving the quality of life. Industries must, therefore, be established even if they are harmful as they are necessary to economic and social development. He was of the view that the risk or danger factor towards the public can only be hoped to be reduced by taking all the

measures required to position these industries in an environment where the public is least vulnerable and the safety requirements are maximized in such industries. It was also noted that permanent factory closure would result in the unemployment of 4,000 workers in the caustic soda factory and which would add to the social poverty problem. Consequently, the court ordered that the factory be opened temporarily under 11 conditions and appointed a committee of experts to control the activity of the industry.

The main provisions set up by the government were:

- The Central Pollution Control Board appoints an inspector to check that emissions levels are in compliance with the Water (Prevention and Control of Pollution) Act, 1974 and the Air (prevention and control of pollution) Act, 1981.
- To create a safety committee for employees.
- Industry to publicize about the consequences and the proper treatment of chlorine.
- To train and instruct the employees regarding the safety of the plant through audio-visual services and to install loudspeakers to alert neighbours in case of gas leakage.
- Staff to use protective equipment, such as helmets and belts.
- That the employees of Shriram furnish the undertaking of the Chairman of Delhi Cloth Mills Limited that they will be "personally liable" for paying compensation for any death or injury in the event of gas escape resulting in death or injury to staff or people living in the vicinity.

Through these conditions have been formulated with respect to the report of the (Manmohan Singh Committee and Nilay Choudhary Committee) to ensure that there is continued compliance with safety standards and procedures so that the potential hazard and risk of workers can be reduced to minimal. In addition, companies can not abandon liability by demonstrating that they are either not reckless about or have taken all the required and appropriate measures to deal with the hazardous material. Therefore, in this case, the court applied the principle of absolute liability.

The court noted that, in addition to issuing guidance, new approaches and methods designed to enforce fundamental rights could be developed under

Article 32 and the Supreme Court. In the event of a threat to fundamental rights, the power under Article 32 is not limited to only preventive actions, but it also applies to remedial acts where rights are already being violated as observed in the case of Bandhua Mukti Morcha v. Union of India. Furthermore, in cases where a fundamental right violation is gross and affects large-scale people or people who are disadvantaged and backward, the court has held that it has the power to offer remedial relief.

The court also went through the Industrial Policy Resolution 1956 and on the basis of the role the state should play in each of them the industries were divided into three groups. The first was the responsibility of the State alone. The second group was those industries that would eventually be State-owned in which the State would then typically take the initiative of setting up new enterprises but it will also be required that the private companies would complement the State's efforts by supporting and establishing enterprises by themselves or involving the state for its help. The third group would cover all other sectors and would usually be left to the private sector initiative and companies.

If a review of the declarations contained in the Policy Resolutions and the Act is carried out, it is found that the activity of producing chemical products and fertilizers is considered, to be a vitally important part of the public sector, the activities involving the public trade must ultimately be conducted by the State itself, within the interim term with state support and under State control and the private enterprises may also be allowed to support the state effort. Although the question of whether a private corporation fell within the ambit of Article 12 of the Constitution of India was not finally decided by the court, it stressed the need to do so in the future.

The court held that all exceptions to the rule set out in Rylands v. Fletcher are not applicable to hazardous industries. The Court adopted the principle of absolute responsibility. The exception available for this case was the act of a third party or natural calamity but the court interpreted that as the leakage was caused due to human and mechanical errors the possibility of an act of third party and natural calamity is out of scope and hence the principle of absolute liability is applicable here. An industry that engages in hazardous activities that pose a potential danger to the health and safety of those who work and live nearby is obliged to ensure that there is no harm to

anybody. This industry must perform its operations with the highest safety requirements, and the industry must be completely responsible to compensate for any harm caused by them, as a part of the social cost for carrying such hazardous activities on its premises.

Reforms brought aftermath

The Gas Leak case in Shriram was a very important case in environmental advocacy, as it dealt with Shri Ram Food and Fertilizers, one of India's largest and richest manufacturing establishments against the Supreme Court, the representative of the people. The Supreme Court considered strict liability insufficient to protect citizens' rights in a developed economy such as India thereby substituting it with the 'absolute liability principle'. It set the Indian Supreme Court to be the protector of the environment and under Article 21, not only of the fundamental right to life but also of a pollution-free and safe life. There were many significant points of this case worth noticing. The court also performed the function of an extra-parliamentary body by insisting that the concept of absolute liability be used and thus set a precedent for future cases to come.

The reforms brought by this case can be seen from the latest case of the Vizag Gas Leak Case where LG Polymers would be held responsible and there is no requirement to show that the leak was caused by negligence. The mere fact that the leak happened from their plant is enough. Till the Oleum Gas Leak case, India also followed the concept of "Strict Liability" under which the company owner/ operator would be held responsible for any non-natural acts on his property irrespective of their negligence or misconduct, but then this concept had to be substituted with Absolute Liability as principles under Strict Liability have defences and limited exceptions inclusive of the defence of the 'Act of God'. It is also necessary to remember that, in keeping with subsequent rulings of the Supreme Court in this matter, the death toll would not be applicable to the determination of liability. Any damage caused by the gas, from death to disease to hospital cost must be covered.

Conclusion

The decision had to be made in such a manner so as not to hinder the economic development of the country and also to ensure justice for the

victims. Only a few months before the Environment (Protection) Act, 1986 came into force did this incident become a guiding force for the implementation of such an effective law. The case set a precedent for all the industries to establish more stringent safety measures. The gas leak case of Shriram was also noteworthy because it was the first time that a company had been held exclusively responsible for an incident and had to pay compensation irrespective of its claims in defence. The reasons for the decision have also been found not only on a legal basis but also on a scientific basis, which is why a special judicial function has been undertaken by the Supreme Court. The decision was made also in view of the importance of industrialization and the fact that it may eventually result in accidents. The decision was also determined considering the terms of the need for industrialization and the inevitable possibility and the impact of injuries. In general, it was a rational decision, taking all social, economic, and legal factors into account, which made the Supreme Court a defender of the environment and public rights.

Medical Negligence and liabilities of Medical Practitioners :

Jacob Methew Vs State Of Punjab

Facts:

- Dr. Jacob Mathew (accused and appellant in this SLP); Ashok Sharma (complainant and respondent 2; respondent 1–Punjab State).
- Jiwanlal (father of respondent 2) admitted to CMC Hospital Ludhiana. One night, Jiwanlal was having difficulty in breathing. Respondent's brother called the nurse, no doctor for 25 mins.
- Dr. Jacob Mathew & Dr. Allen Joseph came. The oxygen cylinder used was empty. No arrangements to make the oxygen cylinder functional. They wasted 5 to 7 mins in between and the patient died.
- Complainant filed FIR u/n S304A+34IPC for offence of criminal negligence by the accused.
- JM First Class in trial Court convicted the accused of 304A IPC.
- Further, the revision petition by the accused was also dismissed by the Sessions Court à Further, High Court also dismissed the revision petition. Therefore, this appeal by Special Leave.

Contention:

1. The accused contends that no specific allegation of any act or omission against the accused persons in the entire documents comprising filed by the police against them.

2. It is contended by the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law.

Legal Issue:

The question was whether the accused committed **negligence**? If so, whether it is a civil liability or **criminal liability**, and how will it be determined?

Ratio & Decision:

(i) Mere deviation from normal professional practice is not necessarily evidence of negligence.

(ii) Mere accident is not evidence of negligence.

(iii) an error of judgment by a professional is not negligence.

(iv) Simply because a patient has not favorably responded to a treatment given by a physician or a surgery has failed, the doctor cannot be held liable per se by applying the doctrine of **res ipsa loquitor.**

1. Court applied **Bolam Test** ***(Bolam vs Friern Hospital Management Committee),*** to determine whether 304A IPC would apply. **As per Bolam Test**, the standard to be applied for judging, whether the person charged has been negligent, would be that of an ordinary competent person exercising ordinary skill in that profession.

2. A clear distinction exists between "simple lack of care" incurring civil liability and "very high negligence" which is required in criminal cases. To apply 304A IPC, the act must be 'recklessly' or 'rashly' or 'grossly' negligent, which no ordinary professional would do, knowing that it could have serious consequences.

3. It is not the case where the accused was not a doctor qualified to treat the patient whom he agreed to treat. It is a case of non-availability of oxygen cylinders because of the hospital having failed to keep available a gas cyl or because of the gas cyl being found empty. Then, probably the hospital may be

liable in civil law but the **accused-appellant cannot be proceeded against under section 304A IPC on the parameters of the Bolam test.**

Guidelines by Court for prosecuting medical professionals for offences of which criminal rashness or criminal negligence is an ingredient:

The person accused cannot always be supposed to have knowledge of medical science to determine whether the act amounts to a rash or negligent act within section 304-A IPC. He has to seek bail to escape arrest, which may or may not be granted to him. In the end, he may be acquitted, but any standards can not compensate for the loss which he has suffered in his reputation. There is a need to protect doctors from frivolous or unjust prosecutions in the interest of the entire society.

1. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court as a credible opinion given by another competent doctor to support the charge of rashness or negligence by the accused doctor.

2. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, get an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an unbiased opinion applying the **Bolam test** to the facts collected in the investigation.

3. A doctor accused of rashness or negligence may not be arrested routinely (simply because a charge has been leveled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against him would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

Principle of Vicarious Liability

This is a landmark judgment dealing with the issue of liability of the State for the tortious act of its servants. This issue came before the Hon'ble Supreme Court in a civil appeal filed against the order and judgment of the Rajasthan High Court.

Facts of the case

Lokumal i.e. Defendant no. 1, a temporary employee of the State of Rajasthan was employed as a motor driver (on probation) of a government jeep car under the Collector of Udaipur. The car had been sent for repairs. On February 11, 1952, while driving the car back from the workshop after the repairs were done, defendant no. 1 knocked down one Jagdishlal, who was walking on the footpath by the side of the public road. Jagdishlal was severely injured and his skull and backbone were fractured. Three days later, he died in the hospital. The Plaintiffs, i.e., widow of Jagdishlal and his daughter aged 3 years, through her mother as next friend filed a suit for damages for tort against Lokumal and the State of Rajasthan (Defendant no. 2) claiming compensation of Rs. 25,000 from both defendants. Defendant No. 1 remained ex-parte and the suit was contested by Defendant No. 2 on various issues.

Decision of the Trial Court

The Trial Court decreed the suit of the plaintiff as against Defendant No. 1 but dismissed the suit against Defendant No. 2. The Court held that the fact that the car was maintained for the use of a collector for discharging his official duties is sufficient to exclude the case from the category of cases wherein the vicarious liability of the employer could be made out. The Trial Court held that Defendant No. 1 was rash and negligent in driving the car that caused the accident which ultimately led to the death of the deceased.

Decision of the High Court

The plaintiff, aggrieved by the order of the Trial Court, filed an appeal to the Rajasthan High Court. The High Court decreed the suit of the plaintiff as against the second defendant also. The Court ordered Defendant no. 2, i.e., the State of Rajasthan to pay compensation of Rs. 15,000 to the plaintiff.

It was held that “the State is in no better position in so far as it supplies cars and keeps drivers for its civil service. It may be clarified that we are not here considering the case of drivers employed by the State for driving vehicles which are utilised for military or public service.”

Thereafter, the State of Rajasthan filed an appeal to the Hon'ble Supreme Court after obtaining a certificate under Article 133 of the Constitution of India from the High Court certifying that the case involved a question of general public importance.

Issues

- Whether the State of Rajasthan is vicariously liable for the tortious act committed by its servant?
- Whether the driving of the jeep car from the workshop back to the Collector's place can be regarded as being done in exercise of sovereign function/power of the State?

Contentions of the parties

Submissions made by the Defendant-appellants

- It was argued on the behalf of defendant-appellants that the question of liability of the State has to be determined in terms of Article 300(1) of the Constitution. It was submitted that the State of Rajasthan could not be held liable under Article 300 of the Constitution of India as the liability of the corresponding Indian State would not have been made out if the case had arisen prior to the commencement of the Constitution.
- It was argued that in order to succeed in his case and prove the liability on the part of the State of Rajasthan, the respondent-plaintiff must prove that the State of Udaipur i.e. corresponding state would have been liable if the case had arisen before the enactment of the Constitution.
- It was also submitted that the jeep car was being maintained in the exercise of sovereign functions and not as a part of any commercial activity of the State.

Submissions made by the Plaintiff-respondents

- It was submitted on the behalf of plaintiff-respondent that Chapter III of Part XII of the Constitution of India, namely "Property, Contracts, Rights, Obligations and Suits" contains other articles i.e.

Article 294 and 295 which deal with rights and liabilities, whereas Article 300 merely addresses the question that in whose name the suit may be filed. Article 300 does not deal with the extent of liability of a State and is not relevant in the case at hand.

Judgment

•The Supreme Court said that it is clear from the findings of the courts below that the tortious act was committed by Defendant no. 2 in circumstances wholly dissociated from the exercise of sovereign powers.

•The Court upheld the decision of the High Court holding Defendant no. 2 liable by laying down the correct legal position that the State was in no better position than any other employer in so far as supplying cars and keeping drivers for its civil services was concerned.

•Construction of Article 300(1) of the Constitution

The Court proceeded to construe the true meaning and effect of Article 300(1). The court pointed out that Article 300 has three parts—

1.The first part provides for the form and cause-title in a suit. It states that a State may sue or be sued by the name of the State.

2.Secondly, that State may sue or be sued in relation to its affairs in like cases as the corresponding provinces/Indian State might have sued or been sued had the Constitution not been enacted.

3.The second part is subject to any provisions made by an Act of the legislature of the concerned State, in the due exercise of its legislative functions and pursuance of powers conferred by the Constitution.

The Hon'ble Supreme Court rejected the contention of respondent-plaintiff that Article 300 is wholly irrelevant for determining the vicarious liability of the State. While acknowledging that Articles 294 and 295 deal with rights to property, assets and liabilities and obligations of the erstwhile Indian States, the Court however observed that these Articles primarily deal with devolution of these rights and liabilities and do not define them. These Articles merely provide for the substitution of one government in place of other.

The Court also held that the second part of Article 300(1) defines the extent of liability by using the expression “in the like cases” and referred back to the legal position as it existed before the enactment of the Constitution for deciding such cases.

The Court held that under Article 300 of the Constitution (which related the law on the subject to 1833 Charter Act through Section 10 of the Charter Act, Section 65 of the Government of India Act 1858, Section 32 of the Act of 1915, Section 176 of the Act of 1935), the ratio decidendi of the Peninsular and Oriental Steam Navigation Co. case (1861) applied. In that case, it was held that “The Secretary of State-in-Council of India is liable for the damages occasioned by the negligence of servants in the service of Government if the negligence is such as would render an ordinary employer liable”.

•The Court propounded the following principles on the issue of liability of the State for the tortious act committed by its servant:
1.It was held that the State should be liable for tort committed by its servant within the scope of his employment just as any other employer.

2.The Court held that the common law immunity that the ‘king can do no wrong’ does not exist in India. Moreover, since the time of the East India Company, the Sovereign has been held liable to be sued in tort and contract and the aforesaid common law immunity never operated in India.

3.With the enactment of the Constitution of India, we have adopted a republican form of government and one of the objectives is to establish a socialistic State. As the State is expected to perform varied industrial and other activities that require the State to employ a large number of servants, there is no justification whether in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant.
•The Court observed that in order to judge the liability of the State of Rajasthan under Article 300(1), it would not be possible to go beyond the last stage of integration leading to the formation of the Rajasthan Union on the eve of the Constitution and that Union would be the corresponding State as contemplated by the Article. It was held that the State of Rajasthan had not been able to show that its predecessor

would not have been liable had the case arisen in the pre-Constitution era.

•It was held that in absence of any contrary provision of law, the liability of the Union of Rajasthan for the acts committed by its servant would be the same as that of the Dominion of India or any of its constituent provinces.

•As neither the Parliament nor the State Legislature has enacted any law exercising their right under Article 300, the law shall remain the same as it had been since the days of the East India Company.

Hence, the Supreme Court dismissed the appeal with costs.

Relevant cases mentioned in the judgment

•State of Bihar v. Abdul Majid(1954): The Court placed reliance on this judgment for recognising the right of the government servant to sue the government for recovery of arrears of salary.

•The Peninsular and Oriental Steam Navigation Company v. the Secretary of State for India (1861): This case was decided by the Supreme Court of Calcutta on receiving a reference from the Small Cause Court Judge. Brief facts of the case were— One of the horses drawing the plaintiffs carriage was injured due to the negligence of the Government employees in carrying a piece of the iron funnel. The plaintiff company claimed damages against the Secretary of the State. Learned Advocate General appearing on the behalf of the defendant contended before the Court that the State cannot be held liable for damages occasioned by the negligence of persons in its employment and that the State cannot be sued in its own court without its consent. The Court pointed out that in order to remove these difficulties arising in the way of getting redressal, the liability of the Secretary of the State in place of that of the East India company was specifically provided. The Court held the Secretary of State liable for the tortious act of its servant. It also clarified that the liability of the Secretary of the State was not a personal liability but had to be satisfied out of the revenues of India.

Analysis & observation

In this case, the Court undertook an in-depth analysis for determining the issue of the liability of the State for the tortious acts committed by its servants.

Reliance was placed on the case of Peninsular & Oriental Steam Navigation Company, wherein it was said that a clear distinction has to be maintained between those acts that are done in exercise of sovereign power or sovereign function and those acts that are done in conduct of undertaking which might be carried on by private individuals without having to delegate the power to them. Immunity shall be given only for those acts which are done in the exercise of sovereign power, i.e., the power that cannot be lawfully exercised except by a sovereign or any private individual to whom the power has been delegated.

While fixing the liability of the State of Rajasthan, the Court, in this case (the State of Rajasthan v. Vidhyawati), said that no provision of common law or statutory law has been shown which could exonerate the State from the liability. Also, with regard to the applicability of the maxim 'the king can do no wrong', the Court said that the rule has become outmoded in the UK itself with the enactment of the Crown Proceedings Act, 1947. Section 2(1) of the said Act provides for the liability of the Crown for the torts committed by its servants or agents as if it were a private person.

However, the Court also pointed out that even before the enactment of the aforesaid Act, the rule of absolute immunity of the sovereign was never applicable in India.

Conclusion

This judgment is the first ever post-constitution decision dealing with the issue of liability of the government for tortious acts of its employees. The case laid down in clear terms that the driving of the jeep car by the driver from the workshop to the Collector's residence was not a part of the sovereign function of the State. A clear and wise distinction has to be made between the acts done in exercise of sovereign power and other acts of the State. A modern welfare State undertakes various activities such as industrial, commercial, public transport etc. for the welfare of the general

public. No longer are the functions of the State confined to the maintenance of law and order. In such circumstances, it becomes pertinent that the State is not granted absolute immunity in all cases and should be held liable for the acts of its employees just like an ordinary employer.

Polluter Pays Principle and Public Trust Doctrine:

M. C. Mehta v. Kamal Nath (1997) 1 SCC 388

important and historic judgments ever made. The Supreme Court did an amazing job of interpreting the "Public Trust Doctrine" and enabling it to apply in India. It also contributed in the establishment of the 'Polluter Pay Principle' and the 'Principle of Deterrence.'

The Public Trust Doctrine asserts that the sovereign holds resources such as land, sea, air, and forests in trust for public use, independent of private property ownership. Land, sea, air, and woods are communal resources that belong to all of humanity. These natural resources are seen to be a gift from the gods. The government manages these in the public interest. As a result, no private institution may possess or use the resources. The government is prohibited from distributing certain public trust resources to any private entity for commercial purposes.

Facts
'Span Motels Private Limited.' was a private corporation operated by the founders of Span Resorts that developed a new project known as "Span Club" on the river's edge. The "Indian Express" released an explosive article headlined "Kamal Nath defies the powerful Beas to keep his dreams floating" that revealed problems with the Span Club's development. After the article was published, it was discovered that the 'then Minister of Environment and Forests'.

Mr. Kamal Nath was involved directly in the Span Motel case. The Ministry of Environment and Forests provided its previous approval to the corporation leasing roughly 27.12 bighas of additional forest area in a letter dated November 24, 1993. (Dated April 11, 1994). This decision allowed the company's founders to proceed with their extravagant project, dubbed "Span Club," which resulted in the river overflowing.

Also, owing to the pressure from bulldozers, tractor trolleys, and earthmovers used to build strongly cemented embankments along the river, which caused a shift in the Beas river's channel, the adjacent lawns were wiped away. In 1995, the Beas River triggered a massive flood that damaged property valued roughly 105 crores.

Issues:

1.Was the construction carried out by Span Motels Pvt. Ltd. legal and justified?

2.Is it possible that Mr. Kamal Nath was wrongfully charged by the court?

3.Whether or not the "Public Trust Doctrine" applies in India?

Arguments Of The Petitioner
The petitioner contended that this building disrupted the environment's ecological balance and harmed the natural conditions of forest land, water, and air, which are gifts from nature, and that it would be considered a breach of Article 21's fundamental right. This would also constitute a breach of Article 51A (g).

"Protection of life and personal liberty" is the subject of Article 21. The notion of the right to life includes nature and the environment, without which life cannot be enjoyed in a healthy, joyful, and happy manner. As a result, it has become a basic right of every Indian person to live a healthy life free of pollution.

"The duty of every citizen to look after the environment," as mentioned in Article 51A (g). Every citizen of India has a responsibility to preserve and maintain the environment since any disruption in any of the natural components required for life would be harmful to the lives of all people of the nation.

Arguments Of The Respondent
Mr. Kamal Nath denied the charges levelled against him. He alleged that M.C. Mehta had falsely accused him. He said that the claims made in the press

reports were unfounded. They are false and exaggerated, and then they were released to tarnish his reputation. It was also claimed that the development took place on land owned by Span Motel. The surrounding area was constructed to protect the land from future floods.

Judgement

This case was heard in court by a two-judge panel, which ordered and instructed that: After so much deliberation, the court granted the "Public Trust Doctrine" in this case. The public trust doctrine, as stated by the judges throughout the hearing, should be included in the Land laws. The court rejected the earlier approval issued by the Ministry of Environment and Forests, as well as the lease instrument in favour of the corporation for an area of 27.12 bighas.

The Himachal Pradesh government was given the task of taking control of the land and returning it to its natural and environmental state. The court ordered the hotel to pay the cost of environmental and ecological restitution settlement under the Polluter Pay Principle.

The pollution generated by the construction of the hotel on the River banks of the Beas was ordered to be reversed and removed by the court. It was decided that NEERI should investigate the motel's pollution control strategies. For its development, the hotel was compelled to create a 4-meter-long boundary wall, beyond which they were not entitled to access the river basin's property. The Motel should not even use a portion of the river basin.

From the Motel's border wall, the river basin should be left intact. The river's bank and basin should be left accessible to the general population. The hotel was prohibited from dumping untreated sewage into the river. The Board was ordered to inspect all hotels, institutions, and companies in the Kullu-Manali area, and if any of them are discovered red-handed releasing untreated garbage into the river, the Board shall take strict legal action against them. The Motel, through its management, should demonstrate why an extra pollution fee is not mandatory. The reports were to be submitted by

the 17th of December 1996 and listed on the 18th of December 1996.

Case Analysis
According to the lawsuit Mr. Kamal Nath (Minister of the Environment and Forest Department) abused his position, resulting in environmental deterioration, damage, and pollution. He put his financial interests first, putting them ahead of his responsibilities and duties to the nation's natural resources. In this case, it was determined that Kamal Nath was directly engaged with the hotel since he used to own a majority of the company's shares. Property damage totaling over 105 crores was caused by his greed and misuse of authority.

An unprecedented flood caused the damage, which was the result of the hotel company's ongoing building on the river bank. Mr. Kamal Nath was the subject of a PIL filed by MC Mehta. After numerous debates and lengthy hearings, the court issued a landmark decision allowing the Doctrine of Public Trust concept to be applied in India. Finally, the Indian judiciary delivered justice to the environment and natural resources, something the ministry of forest and the environmental department had failed to achieve.

Conclusion
M.C. Mehta v. Kamal Nath & Ors. is an important landmark case. This case gave rise to a new notion in India:
The "Public Trust Doctrine" principle's application. Apart from this concept, the judgement correctly applied two additional principles that were significant under Environmental Law.

When the court ordered the hotel to pay the compensation costs, the "Polluter Pay Principle" was used. When the court imposed exemplary damages on the hotel, the "Principle of Deterrence" was used.

The doctrine of public trust lays the groundwork for increasing the impact of Indian environmental laws' efficiency and efficacy. It also commands the state to maintain and care for the natural resources that our mother nature has bestowed upon us. They must be safeguarded, kept, and valued. It made it a responsibility for Indian residents to safeguard their environment from harm, since it is a fundamental right for every person to live in a healthy

environment.

This philosophy is extremely important for environmental conservation. The decision not only upheld environmental justice for nature, but it also established a successful and significant component of environmental legislation in the country to help safeguard the environment. It became simpler for the judiciary to rule on environmental disputes after this decision, such as Th. Majra Singh v. Indian Oil Corporation and M.I. Builders v. Radhey Shyam Sahu.

M. C.Mehta v. Union of India (1996)4 SCC 750

Man's development is often seen to happen at the cost of the environment. From improper disposal of non-biodegradable items to large industrial discharge, everything takes a toll on the environment without which human life cannot thrive. The Ganga, which is regarded as the most sacred river in India, has now become a recipient of huge amounts of domestic and industrial waste. The case revolves around the discharge of harmful industrial effluents into the river.

The case analysis aims to scrutinize the background, facts, issues raised, arguments of both sides and highlighted concepts in the case and mentions them as succinctly as possible.

- Bench - E.S. Venkataramiah and K.N. Singh, JJ. - Date of Judgment 22nd September 1987

Introduction

Emanating from the Himalayas, the Ganga flows south and then eastwards and drains itself into the Bay of Bengal. The length of the river is 2,525 km and has been the lifeline of many civilizations in India. Kanpur with its population of 2.9 million people becomes one of the biggest cities located on the banks of river Ganga and discharges a huge amount of waste into the river. The main pollutant from this city is the industrial/trade effluents from the leather industry.

The wastewater from this industry contains putrescible organic and toxic inorganic material when discharged in the water will deplete the level of dissolved oxygen in the waterbody and will lead to the death of aquatic life and would cause harm to any person who consumes this water. The case

was taken up by the Supreme Court via a writ petition filed by the renowned lawyer, Shri MC Mehta who is regarded as a pioneer in the field on environmental law and it was found that many industries on the banks of the river were discharging their effluents into the river even without primary treatment of the same. The case is alternatively known as the Ganga sollution case, Kanpur Leather Tanneries case or Mehta I.

Facts of the Case
M.C. Mehta, an environmental lawyer and social activist, filed a Public Interest Litigation (PIL) in the Supreme Court of India against about 89 respondents, wherein Respondent 1, Respondent 7, Respondent 8 and Respondent 9 were Union of India, the Chairman of the Central Board for srevention and Control of sollution, the Chairman of Uttar sradesh sollution Control Board and Indian Standards Institute respectively who were not held liable.

The court ruling commenced in 1985 in the holy city of Haridwar located along the banks of the stream Ganga when a matchstick flung by a smoker resulted in the river bursting into flames for over 30 hours. The fire was discovered to be a consequence of the presence of harmful inflammable compound layer over the waters. The Court had believed the issue to be one of prime significance, however, the immense size of the case, i.e., the stretch of the river, was found to be troublesome.

Issues:

1.Whether all the leather tanneries had at least set up a primary treatment plant

2.Whether the State Government had paid attention to the worsening condition of the sacred river and had initiated probation into the matter?

3.Whether any steps, if at all, had been taken by the state?

4.Whether the smaller industries should be funded for setting up effluent treatment plants? If yes, then what should be the criteria to determine **smaller industries**?

5.What all steps should the Central Government must take to regulate pollutant discharge into the river throughout its course?

Arguments of Petitioner:

1.The petitioner had grieved that neither the authorities nor the people, whose lives were intricately connected with the river and directed affected by it, seemed to be concerned about the increasing levels of pollution of the Ganga and necessary steps were required to prevent the same.

2.The petitioner, in the capacity of an active social worker, had therefore sought a writ/direction/order in the nature of mandamus, directing inter alia inhibiting the Respondents from releasing toxic effluents into the Ganga until they integrate appropriate treatment plants to treat the effluents to stop water pollution.

Arguments of Respondents:

1.None of the tanneries disputed the fact that the effluent discharge from the tanneries grossly pollutes the Ganga

2.It was stated that they discharge the trade effluents into the sewage nullah, which leads to the Municipal Sewage slants before discharge into the river.

3.Some tanneries stated that they have already had primary treatment plants, while some are presently engaged in the same.

4.Some of the tanneries who were members of the Hindustan Chambers of Commerce and some of the other tanneries guaranteed that with the approval of Respondent 8 (State Board), they would construct primary treatment plants which would be operational within a period of six months from the date of hearing and in failing to do so, will shut down their tanneries

5.However, they argued that it would not be possible for them to establish secondary treatment plants to treat the wastewater further as it would involve huge expenditure which is beyond their means.

Judgment

The court considered all the facts and gave the judgment in 1988. The court in this case, stated that petitioner was someone who was interested in protecting the people who were using the water and he could file a petition

to enforce statutory provisions against the mahapalika and other officials involved. The court indicated that several waters borne diseases that could result due to the polluted water and how it is very harmful for the common man. On the issue of whose responsibility was it, the court held that the industries were responsible to make sure that their waste is treated properly and then discharged.

The court further said that an industry should be given a license only if they can demonstrate an adequate way of treating the waste. The existing industries if, found responsible for water pollution then strict action must be taken against them. The court also ordered the tanneries to establish a primary treatment plant if not a secondary one.

The court also held the mahapalika responsible for not obliging to their duties and not taking any steps for prevention of water pollution. It issued directions to the mahapalika to take immediate actions for the same. The court also asked the central government to issue books free of cost in order to increase the knowledge regarding the environment of the general public. It also said that this judgement would be applicable to all the Mahapalikas which have a jurisdiction over the river Ganga.

Conclusion

The judgement is still considered as one of the major ruling in the field of environmental law in our country. The judgement took up various new situations and ways of interpretation of the laws and Fundamental Rights. The stances laid down in this case are still being used by the court. Hence this case served as landmark ruling in the history of Indian Judiciary.

The case is not all about the rights of people, compensation and economic losses but the case also brought in front of the entire country the seriousness of environmental issues. The disasters like this and Bhopal gas tragedy had acted very dangerously for the environment. In the present world of technological development and industries the threat to the environment is very expedient.

As much this advancement is necessary for the development of the society, there is an urgent need to focus attention towards environmental problems being posed by this development. As each passing day we are bringing ourselves closer to the end of the environment. Environment is a privilege provided to us to everyone residing on this earth and it is everyone's human right to enjoy a safe and healthy environment and it is also everybody's duty to work for it and contributes towards its betterment.

Council for Enviro Legal Action v. Union of India (1996)5 SCC 281

INTRODUCTION:

In India, Polluter Pay Principle was first implemented and defined in 1996 under this case law. According to this principle, the polluter has to not only compensate the victims of pollution caused by his activity but also has to pay for the restoration of environmental degradation as mentioned by the Organisation of Economic Corporation and Development(OECD). The measures are accordingly taken as decided by public authorities for the polluters so that the environment is in acceptable conditions. This principle forms a major part of Indian Environmental law.

FACTS:

In this case, writ petition was filed by an environmental association named as Indian Council for Environmental Legal Action. This organisation raised an issue highlighting the conditions regarding the people living in a small village named Bichhri village, located in Udaipur district of Rajasthan. Northern part of this village was occupied by the chemical industrial plants like Hindustan Zinc Limited and many others. The main emphasis was laid that how bug businessmen see these opportunities as ways to increase their profit margins by encouraging industrialization and from exports.

In 1987, the fourth respondent that is Hindustan Agro Chemicals began manufacturing concentrated form of sulphuric acid commonly known as oleum along with single super phosphate which was considered as a serious threat to the inhabitants living in surrounded villages. After this the fifth respondent TataSilver Chemicals also became active and started with the production of “H” acid give me the same complex. Acid h was produced for the export transactions majorly. Then the eighth respondent Jyoti chemicals

came who was situated in another compound which was producing 'H' acids mostly, along with several other toxic chemicals.

Many other chemical industries were also established for the production of fertilizers as well as other such chemicals which were contributing in some or other way towards environmental pollution. All the respondents, in this case, were generating hazardous waste discharge in this specific region of Bichhri village, which was not even being adequately treated by these industrial plants. Whether it be water, air, soil, or anything else as soon as it was coming in contact with these industrial effluents it was getting poisoned and unfit for any human or animal use.

According to the report submitted, there were about 2500 tonnes of highly toxic sludge was produced and on the other hand 375 tonnes of "H" acid was also being manufactured which was devotedly for the exporting purposes. All such toxic materials polluted soil, groundwater, and also contributed in contaminating water streams. Over many years, these toxic substances made water extremely polluted and unfit for human consumption. These water streams were used as sources for drinking, irrigation purposes, along with soil fertilisation, which was the primary source of survival for many residents. This pollution further led to a variety of disorders, diseases and deaths in the surrounding villages.

The parliament also showed concerned about the sudden degradation and the ministry also ensured that some reasonable action would be taken but nothing transpired. As a result, There was a virtual protest started by the villagers of that region which led to the district magistrate enforcing section 144 off CRPC for the closure of these industries.

ISSUES RAISED:

- Whether the respondent is liable to pay the amount necessary to carry out the appropriate remedial action?
- Whether the industries involved in the manufacturing of these toxic chemicals had taken any environmental precautions?

ARGUMENTS OF PLAINTIFF:

Petitioners started their argument with presenting the fact that Defendant industries started the manufacturing of 'H' acid along with other chemicals in a plant situated in the same complex in the Bichhri village. The

manufacturing process of which leads to the formation of large quantities of extremely poisonous industrial effluent, which are particularly iron-based and gypsum which mainly facilitates the generation of sludge which was never adequately treated according to the safety norms. Therefore, it was requested that the plants had to be closed down instantly. In addition, manufacturing should be suspended until the waste is adequately treated so as not to cause any damage to the environment and its resources.

Also the petitioner claimed that almost every respondent industry had applied for 'No- Objection Certificate' for the production of this harmful chemicals and was denied and rejected by the authority is evidently depicts that the production of these harmful Chemicals will lead to the destruction of environment in enormous ways.

ARGUMENTS OF DEFENDANT:

Defendant counter-argued and filed a counter-affidavit to sustain their statements. The assertion presented by them included; Hindustan Agro Chemicals Limited: As per their affidavits this plant had already been granted by the Pollution Control Board a "No-Objection Certificate" for the production of sulphuric acid and alumina sulphate with some conditions to be strictly followed under Water [Pollution Prevention and Control] Act, 1974 and Air (Pollution Prevention and Control Act) Act, 1981, After which they began with the production of Oleum and Single Super Phosphate [S.S.P.] rather than producing sulphuric acid. They further submitted that the treatment is quite difficult since most of the toxic substances found are resistant in nature.

PRINCIPLE APPLIED:

The court applied "Polluter Pay Principle" for the first time which specified that the polluter must pay for all the expenses caused as the pollution charges.

This principle was a result of continued evolution of the 'absolute liability' in the case of *M C Mehta v. Union of India*, court-mandated that the polluters must pay a penalty for causing pollution, which will be used for improving the environmental and residential conditions for the inhabitants of the regions affected.

Also, in the case *of Vellore Citizens Welfare Forum v. Union of India and others*, this principle was regulated by Articles 48-A and 51-A(g) of the Indian Constitution and that the principle may be inferred with the prevailing legislation. in the case of *Oleum Gas Leak*, in which even though Shriram Factories complied with applicable laws like the Air Act of 1981, the Supreme Court found them responsible for the leakage of oleum gas and for the deterioration of the environment.
It is still argued whether only a civil action against the polluter should be applied or whether there is also a necessity to make the polluters criminally liable as well. the right to community participation for protection of the environment is considered to flow from *Article 21* of the Constitution of India which is right to life and personal liberty.

JUDGEMENT:

After considering all the facts and circumstances judges declared that industry must deposit the amount as directed by this Court vide order dated April 11, 1997 with compound interest. Thousands of villagers have been adversely affected because no effective remedial steps have been taken so far. The applicant industry has succeeded in their design in not complying with the court's order by keeping the litigation alive for more than 15 years by filing the interlocutory applications which were being totally devoid of any merit are accordingly dismissed with costs.

On April 11,1997, the respondent industries were ordered to pay rupees 37,385,000 INR together with a compound interest of 12% per annum until the sum would have been fully paid or compensated. Also, the respondent industries were mandated to pay the litigation fees for deliberately wasting the court's time and resources, as the case was carried on for around 15 years, long after the Court's final decision and for all these years the applicants were forced to carry on the case. Taking into account the sum total of the facts and findings of the case, regarding both the interlocutory applications, the court ordered the respondent industries to pay a sum of Rs.10,00,000 INR as costs. This sum of money would also be used, under the direction of the respective authorities, for taking mandatory actions around the Bichhri village and neighbouring regions within the Udaipur district, Rajasthan.

In this way for the first time the court implemented the "polluter pay principle" as the cost was compensated from all the big industrial

businessmen for causing environmental damage and also risking the lives of villagers without treating the hazardous slurries of their plants properly.

CONCLUSION:

Sustainable development is considered as the basic necessity for the human survival. As the environment cannot really be actually recompensed, this allows for a justification to levy taxes upon guilty companies along with the assurance that the money will be utilized to help the victims suffered. But in reality, these polluters mainly submit all the compensated amount to government officials, advisors, most of whom profit from the method. As presently interpreted, the polluter pays concept actually winds up as just a mechanism for transferring money from polluters to non-victims (governmental officials).

In context of this, it can be concluded that it should have been dealt with more harshly as the case crossed 15 years and the damage caused to the villagers was too great in magnitude and was in need of urgent intervention not to have been compensated for 15 entire years. As per my views the judgement was justified and completely reasonable.

Principle of Sustainable Development and Precautionary Principle :
Vellore Citizens' Welfare Forum v. Union of India (1996)5 SCC 647

APPELLANT: Vellore Citizens Welfare Forums

RESPONDENT: Union of India rep. by its Secretary, Department of Environment and Others

BENCH: Justice Kuldip Singh, Justice Faizan Uddin, Justice K. Venkataswami

COURT: Supreme Court

DECIDED ON: Apr-07-2016

Facts

In the present case the Petitioner- Vellore Citizens Welfare Forum, filed a PIL under Article 32 of the Constitution. The Petition was filed against the water pollution caused due to excessive release of pollutants by the tanneries and other industries in the State of Tamil Nadu into the river Palar. Palar River was the main source of water for the livelihood of the surrounding people. Later, the Tamil Nadu Agricultural University Research Centre, Vellore discovered that approximately 35,000 hectares of agricultural land has

turned either entirely or partially barren and not fit for cultivation. This is one of the landmark cases whereby the Supreme Court critically analyzed the relationship between environment and industrial development.

Issue Raised

Whether the tanneries should be permitted to keep on working at the expense of the health of individuals and the environment?

Arguments from the Parties

Petitioner

The Learned Counsel of the Petitioner argued that the whole surface and sub-soil water of river Palar has been intoxicated and as a result, it has turned out non-accessible for consumption to the inhabitants of the region. They further contended that the tanneries in the State of Tamil Nadu have caused serious damage to the environment in the region. A study conducted by a non-administrative association, covering 13 towns of Dindigul and Peddiar Chatram Anchayat Unions, uncovers that 350 wells out of an aggregate of 467 wells used for drinking and water system purposes have been contaminated.

Respondent

The advocates from the side of the tanneries argued that the quality concerning Total Dissolved Solids (TDS) fixed by the Board wasn't legitimized. This Court by the request dated April 9, 1996, coordinated the NEERI to examine this angle and offer its input. In its report, NEERI has legitimized the models stipulated by the Board. The Ministry of Environment and Forests has not completely set down models for inland surface water release for Total Dissolved Solids, sulphates, and chlorides. the selection on these guidelines rests with the individual State Pollution Control Boards in line with the prerequisites supported nearby site conditions. The rules stipulated by Tamil Nadu Pollution Board Control (TNPCB) have been advocated. The principle endorsed of the TNPCB for inland surface water release is met for tannery squander waters cost-viably through appropriate embed control gauges in tanning activity, and normally structured and viably worked wastewater treatment plants (ETPs and CETPs).

Judgement:

The Supreme Court after hearing both the parties and examining the report ruled making all efforts to maintain a harmony between environment and development. The Court observed that these Tanneries are the major foreign exchange earner to the country and also provide employment to several people. But at the same time, it harms the environment and poses a health hazard to everyone. The Court ruled in favour of Petitioners and directed all the Tanneries to deposit a sum of rupees ten thousand in the office of Collector as fine. The Court further directed the State of Tamil Nadu to award Mr M. C. Mehta with a sum of Rupees Fifty thousand as a token of appreciation towards his efforts in protecting the environment. The Hon'ble Supreme Court also made it a point to emphasize on the formation of green benches in dealing with matters related to the protection of the environment.

Doctrine of Ultra Vires :
Ashbury's Railway Company v. Riche

There are three types of ultra vires acts. They are-

- **Ultra vires the Memorandum or the company:** If the act done by the company is beyond the powers given in the objects clause of the Memorandum, it is called an act, which is ultra vires the Memorandum or the company.
- **Ultra vires the Articles but intra vires the company:** If the act done by the company is beyond the powers given by the Articles but are within the powers of the Memorandum are called ultra vires the Articles but intra vires the company.
- **Ultra vires the directors but intra vires the company:** If the act done by the directors, which are ultra vires the directors, but intra vires the company. These acts can be ratified by the company and can make it binding.

Considering various positions of director in company as the Trustees, Organs and Agents awell Officers of the respective companies in which they occupy the responsible post, they should be made liable for making any ultra vires transactions by the companies and the following remedies will be available against the Company and as well against the erring directors, namely.
Injunction to restrain the company:

The members are entitled to hold a registered company to its registered objects. Thus members can obtain injunction against company's ultra vires act.

In **Attorney-General v. Great Eastern Rly Co (1880) 5 AC 473** case, the Court held that whenever an ultra vires act has been or is about to be undertaken, any member of the company can get an injunction to restrain it from proceeding with it.

In **London County Council v. Attorney General, (1902) AC 165** case, the council having statutory power to work tramways was restrained from running omnibus in connection with tramways. The court found that the omnibus business was in no way incidental to the business of working tramways, and therefore, could not be undertaken although it might have materially contributed to the success of the council's tramways.

Personal Liability of Directors:

Under the law of agency, an agent must act only within the scope of his agency, and if he does not, he becomes liable to third parties for breach of warranty of authority. Directors are agents of company. Hence it is one of the duties of the directors to see that the shareholder's fund is used only for the legitimate business of the company. If any part of it has been diverted to purpose foreign to the company's memorandum, it will be ultra vires act and the directors will be personally liable to replace it.

In **Jehangir R. Modi v. Shamji Ladha, (1866) 4 Bom HCR 185** case, the Bombay High Court held that a shareholder can maintain an action against the directors without impleading the company to compel them to restore to the company, the funds of the company that have been employed in transactions that they have no authority to enter in to.

In **Laksmanaswami Mudaliar v. L.I.C., AIR 1963 S.C. 1185** case, the United India Life Insurance Co. Ltd. was an incorporated company having the principal objects of carrying of the life insurance business. In 1956, the business of the company was taken over by the Life Insurance Corporation of India. In December 1955, shortly before the acquisition, the directors of the company in terms of the power vested in the objects clause supported by the resolution of shareholders made payment of two Lac rupees as a donation to a trust formed with the object of promoting technical or business knowledge, including knowledge in insurance. It was held by the Apex Court that the

donation of rupees two Lac was ultra vires and resultantly, the directors were held personally liable to refund the amount paid to the trust. The court also observed that: "As office bearers of the company are responsible for passing the resolution ultra vires the company, they will be personally liable to make good the amount belonging to the company which was unlawfully disbursed in pursuance of the resolution."

In **Aviling Barford Ltd. v. Perion Ltd., (1989) BCLC 626 Ch. D** case, the Court held that the directors who spent money on unauthorized objects were personally liable to restore it.

Liability of Directors for Breach of Warranty of Authority:

It is the duty of an agent to act within the scope of his authority. For, if he goes beyond, he will be personally liable to the third party for breach of warranty of authority. The directors of a company are its agents. As such it is their duty to keep within the limits of company's powers. If they induce, however innocently, an outsider to contract with the company in a matter in which the company does not have the power to act, they will be personally liable to him for his loss.

In **Weeks v. Propet (1873) LR 8 CP 427** case, a railway company invited proposals for a loan on debentures. At the time, the advertisement was published, the company had issued debentures of the amount of 60,000 pounds, being the full amount which it was by its constitution authorized to issue. It had thus exhausted its borrowing powers. The plaintiff offered a loan of 500 pounds upon the footing of that advertisement. The directors accepted it and issued to him a debenture of the company. The loan being ultra vires was held to be void. In an action by the plaintiff against directors, it was held that the directors are personally liable because by accepting the loan, they had warranted that the company had not exhausted its borrowing powers, a representation that amounted to a false warranty. The directors were, therefore, personally liable to compensate the plaintiff.

It must however, be remembered that the representation of authority which the directors hold out must be a representation of facts and not of law. For example, whether a company is authorized by its memorandum to borrow is a question of law which every man dealing with the company is supposed to know. But where, the memorandum authorizes a company to borrow whether that power has been fully exercised or not becomes a question of

fact. A misrepresentation of the former will not, but that of the latter will, give a cause of action against the directors.

Effect on Property Acquired Under Ultra Vires Contract:

If a company's money has been spent ultra vires in purchasing some property, the company's right over the property must be held secure. For, that asset, though wrongly acquired, represents the corporate capital. W

In **Ayers V South Australian Banking Co. (1871) LR 3 PC 548** case, the court observed: "Property legally and by formal transfer or conveyance transferred to a corporation is in law duly vested in such corporation even though the corporation was not empowered to acquire such property."

In **Great Eastern Railway v Turner (1872) LR 8 Ch** case, the Court observed: "The directors are the mere trustees or agents of the company, trustees of the company's money and property, agents in the transactions which they enter into on behalf of the company".

In **Ahmed Sait v. Bank of Mysore (1930) 59 MLJR 28** case, the Madras High Court allowed a company to sue on a mortgage to recover the money lent in spite of the fact that the transaction was beyond the powers of the company.

In **Selangor United Rubber Estates v. Crackdock (NO.), (1968) 2 All ER 1073** case, the Court held that the fact that the Companies Act makes it unlawful for a company to give any financial assistance for anyone to purchase any of its shares does not prevent such a person from being held a constructive trustee for the company such of its money as is unlawfully provided for such purpose".

Effect of Ultra Vires Contracts:

Any contract made by a company which falls outside its objects as defined in the memorandum is wholly void and is a nullity in the eyes of law.

In **Ashbury Railway Carriage & Iron Co. V Riche, (1875) LR 7 HL 653** case, the Court held that an ultra vires contract, being void- ab- initio, cannot become intra vires by reason of estoppels, lapse of time, ratification, acquiescence or delay. No performance on either side can give the unlawful contract any validity or be the foundation of any right of action upon it.

In **Central Transportation Co V Pullman's Car Co. (1890) 139 US 24** case, Justice Gray observed: "which is ultra vires, that is to say, outside the objects as defined by the memorandum of association is wholly void and of no legal effect."

The objection to an ultra vires contract is, not merely that the corporation ought not to have made it, but that it could not make it. The question is not as to the legality of the contract; the question is as to the competency and power of the company to make it. The incapacity of the company to make contract sometimes caused great injustice and hardships to the person who had no knowledge of such incapacity of the company.

In **Beauforte (Jon) London, Ltd. Re: (1953) Ch 131** case, the company, Jon Beauforte Ltd., was authorized by its memorandum of association to carry on the business of costumers, gown, robe, dress and mantle makers, tailors and other activities of allied nature. But later the directors of the company decided to carry on the business of manufacturing veneered panels, which was admittedly ultra vires the objects of the company. For this purpose, the company erected a factory. A firm of builders who constructed the factory had brought an action claiming 2078 pounds. Another firm supplied veneer to the company and had a claim of 1011 pounds. A firm sought to prove for a simple contract debt of 107 pounds in respect of fuel supplied to the factory. The builders of the factory had obtained a consent judgment in the nature of compromise, but it was obviously arrived at on the footing that the contract was ultra vires and all the three applications were dismissed.

In **Port Canning & Land Investment Co. Re (1871) 7 Bengal LR 583** case, A company purchased and operated a rice mill beyond its powers. The rice was consigned to certain persons who had paid the price. The consignees had to sell the rice, owing to its inferior quality, at a considerable loss. The company gave them drafts promising to pay for the loss. The company went into liquidation and the question about the enforceability of the drafts arose. The court held that trading in rice was a transaction ultra vires the company; the directors, therefore, could not bind the company, and the consignees could not recover. The Court observed that anyone who deals, with the company is supposed to know its powers. In India, there is an even earlier authority on this point.

In India, there is no specific statutory provision under which an innocent third party making the contract with the company may be protected. Thus, in

India if the doctrine of ultra vires is strictly applied, where the contract entered into by a third party with a company is found ultra vires the company, it will be void and cannot be ratified by the company and neither the company can enforce it against the third party nor the third party can enforce it against the company. However, it is to be noted that even in India the courts have evolved certain principles to reduce the rigors of the doctrine of ultra vires. The following principles may be deduced from the judicial decisions.

1. If the ultra vires contract is fully executed on both sides, the contract is effective and the courts will not interfere to deprive either party of what has been acquired under it.
2. If contract is executor on both sides, as a rule, neither party can maintain an action for its non-performance. Such a contract cannot be enforced by either party to the contract.
3. If the contract is executor on one side (i.e. one party has not performed the contract) and the other party has fully performed the contract, the court differ as to whether an action will be on the contract against the party who has received benefits. However, the majority of the courts appear to be in favour of requiring the party who has taken the benefit either to perform his part of the contract or to return the benefit.

Effect of Ultra Vires Torts:

Civil wrongs are called torts in the eyes of law, and the rule of constructive notice says that anyone dealing with the company must have notice of the memorandum and articles of association of the company. That's why a company is not liable for an ultra vires contract however it does solve the problem of injustice caused. On the other hand the company is made liable for the tort committed by its servant while acting ultra vires the company. There is no measurement as to the limit to which a company may be held liable for damages caused from its ultra vires acts. But the modern company law makes a company liable in torts if it is proved that-

1. The activity in course of which the alleged tort has been committed falls within the ambit of memorandum of the company, and
2. The tort was committed by the servant within the scope of his employment

Ultra Vires Acts Leading to Crime:

A company will be liable for anything which its officers do with the actual or usual scope of their authority in connection with or ancillary objects but it will not be liable for a tort or crimes committed by its officers in connection with some entirely different business. Thus a company may be held liable for any tort or crime if:-

1. The tort or crime has been committed by the officers (or agents as director) or servants of the company within the course of his employment, and
2. The tort or crime has been committed in respect of or in pursuance of an activity which falls within the scope of the objects clause of its memorandum.

It is to be noted that whether or not the company is liable for ultra vires torts or crimes, the officers or servants committing the act will no doubt be personally liable therefore.

Conclusion:

To protect the interest of the investors and the creditors, specific provisions are made in the memorandum of the company which defines the objectives of the company. It is a public document. All the actions of company must be to protect the interest of the creditors and investors. Directors of the company can act only within the purview of the authority provided to them under these objectives specified in the memorandum. Any act done beyond that allowed in the memorandum is ultra vires. Such act cannot be ratified by the shareholders. Hence the directors must be very cautious.

The application of Doctrine of ultra vires has often resulted in injustice. Similarly it is criticised on the ground that it is not based on any fundamental principle of company law. The critics are of the opinion that every contract entered into by a company should be binding on it – whether within or beyond its power. Several European countries have refused to apply the doctrine of ultra vires.

Doctrine of Indoor Management :
Royal British Bank v. Turquand

Background

The Memorandum of Association of the Company shall be lodged with the Registrar of Companies. This is available for public inspection since people engaged in business with the Company are free to inspect the document to see whether there is any limitation of powers or limitations on the business. It created a problem it deems outsiders to be aware of any limitations placed on the Company's management. Therefore, if it was later found that there was an irregularity within the Company regarding any decision, it regards outsiders dealing with the Company to be aware of it.

Facts

1.They appointed Turquand as the official manager to liquidate the insolvent 'Cameron's Coalbrook Steam, Coal, and Swansea and London Railway Company'. This company was incorporated under the Joint Stock Companies Act of 1844.

2.The company had issued a bond of £2000 to the Royal British Bank, which secured the company's drawings on its current account. The bond was under the seal of the company, signed by two directors and the secretary.

3.The plaintiffs, the Royal British Bank, for the non-payment of the same sued him.

4.The company claimed that, under its registered deed of settlement (the articles of association), the directors had only the power to borrow the company's resolution had allowed what.

5.The defendants also pleaded that it had adopted no such resolution allowing the making of the bond and that they give any such bond without the authority and consent of the shareholders of the company.

Issues

Whether the company is liable for the loan?

Judgment

1.Sir Jervis was of the opinion that the judgment of the Court of Queen's Bench should be upheld. He was inclined to believe that the question, which was mainly raised both in this case and in that Court, does not necessarily arise and does not need to be decided. His impression is that the resolution set out in the replication goes far enough to satisfy the requirements of the deed of settlement.

2.According to Sir Jervis, the deed allows directors to borrow on a bond the sum or sums of money which may be borrowed from time to time by a resolution passed at the General Meeting of the Company and the replication

of the resolution, adopted at the General Meeting, authorizes the directors to borrow such sums on bonds for such periods and at such interest rates as they may deem expedient, in accordance with the act of settlement and the Act of Parliament; but the resolution does not otherwise define the amount to be borrowed.

3.Sir John Jervis CJ contended that it seems to me to be enough. If this is the case, the other question does not arise, we do not need to decide; for it seems to us that the plea, whether we consider it to be a confession and a refusal or a special Non-est factum, does not raise any objection to that advance as against the Company.

4.He further said that – we can now take for granted that dealings with these companies are not like dealings with other partnerships and that the parties dealing with them are bound to read the statute and the act of settlement. But they're not bound to do more than that. And the party here, reading the act of settlement, would find, not the prohibition of borrowing, but the permission to do so under certain conditions. In finding that the authority could be completed by a resolution, it would have the right to infer the fact of a resolution authorizing what appears to have been legitimately done in the face of the document.

Concepts Highlighted

1.According to the Turquand rule, any outsider who enters into contracts with a company in good faith is entitled to assume that the internal requirements and procedures have been complied with. Consequently, the company will be bound by the contract even if the internal requirements and procedures have not been complied with.

2.One cannot claim under the doctrine of the indoor management if the outsider is aware that the internal requirements and procedures have not been complied with; or if the circumstances under which the contract was concluded on behalf of the company are suspicious.

3.However, it is sometimes possible for an outsider to determine whether an internal requirement or procedure has been complied with. If this can be ascertained from the public documents of the company, the doctrine of disclosure and the doctrine of the constructive notice shall apply and not the indoor management rule.

Principle of Lifting the Corporate veil :

From the juristic point of view, a company is a legal person distinct from its members [Salomon v. Salomon and Co. Ltd. (1897) A.C 22]. This principle may be referred to as the 'Veil of incorporation'. The courts in general consider themselves bound by this principle. The effect of this Principle is that there is a fictional veil between the company and its members. That is, the company has a corporate personality which is distinct from its members. But, in a number of circumstances, the Court will pierce the corporate veil or will ignore the corporate veil to reach the person behind the veil or to reveal the true form and character of the concerned company. The rationale behind this is probably that the law will not allow the corporate form to be misused or abused. In those circumstances in which the Court feels that the corporate form is being misused it will rip through the corporate veil and expose its true character and nature disregarding the Salomon principal as laid down by the House of Lords.

Broadly there are two types of provisions for the lifting of the Corporate Veil- Judicial Provisions and Statutory Provisions. Judicial Provisions include Fraud, Character of Company, Protection of revenue, Single Economic Entity etc. while Statutory Provisions include Reduction in membership, Misdescription of name, Fraudulent conduct of business, Failure to refund application money, etc. This article at first introduces to the readers the concept of "Veil of incorporation", then it explains the meaning of the term-'Lifting Of The Corporate Veil', it then points out the Judicial as well as the Statutory provisions for Lifting of The Corporate Veil with the help of various case-laws.

Introduction-

Incorporation of a company by registration was introduced in 1844 and the doctrine of limited liability of a company followed in 1855. Subsequently in 1897 in Salomon v. Salomon & Company, the House of Lords effected these enactments and cemented into English law the twin concepts of corporate entity and limited liability. In that case the apex Court laid down the principle that a company is a distinct legal person entirely different from the members of that company. This principle is referred to as the 'veil of incorporation'.

The chief advantage of incorporation from which all others follow is the separate entity of the company. In reality, however, the business of the legal person is always carried on by, and for the benefit of, some individuals. In

the ultimate analysis, some human beings are the real beneficiaries of the corporate advantages, "for while, by fiction of law, a corporation is a distinct entity, yet in reality it is an association of persons who are in fact the beneficial owners of all the corporate property." And what the Salomon case decides is that 'in questions of property and capacity, of acts done and rights acquired or, liabilities assumed thereby…the personalities of the natural persons who are the companies corporators is to be ignored".

This theory of corporate entity is indeed the basic principle on which the whole law of corporations is based. Instances are not few in which the Courts have successfully resisted the temptation to break through the corporate veil.

But the theory cannot be pushed to unnatural limits. "There are situations where the Court will lift the veil of incorporation in order to examine the 'realities' which lay behind. Sometimes this is expressly authorized by statute…and sometimes the Court will lift its own volition".

Meaning Of Lifting Or Piercing Of The Corporate Veil-

The human ingenuity however started using the veil of corporate personality blatantly as a cloak for fraud or improper conduct. Thus it became necessary for the Courts to break through or lift the corporate veil and look at the persons behind the company who are the real beneficiaries of the corporate fiction.

Lifting of the corporate veil means disregarding the corporate personality and looking behind the real person who are in the control of the company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In this regards the court will break through the corporate shell and apply the principle of what is known as "lifting or piercing through the corporate veil." And while by fiction of law a corporation is a distinct entity, yet in reality it is an association of persons who are in fact the beneficial owners of all the corporate property. In United States V. Milwaukee Refrigerator Co., the position was summed up as follows:

> "A corporation will be looked upon as a legal entity as a general rule…… but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons."

In Littlewoods Mail Order Stores Ltd V. Inland Revenue Commrs, Denning observed as follows:

> "The doctrine laid down in Salomon v. Salomon and Salomon Co.Ltd, has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited liability company through which the Courts cannot see. But, that is not true. The Courts can and often do draw aside the veil. They can and often do, pull off the mask. They look to see what really lies behind".

Judicial Provisions Or Grounds For Lifting The Veil-

FRAUD OR IMPROPER CONDUCT- The Courts have been more that prepared to pierce the corporate veil when it fells that fraud is or could be perpetrated behind the veil. The Courts will not allow the Salomon principal to be used as an engine of fraud. The two classic cases of the fraud exception are Gilford Motor Company Ltd v. Horne and Jones v. Lipman. In the first case, Mr. Horne was an ex-employee of The Gilford motor company and his employment contract provided that he could not solicit the customers of the company. In order to defeat this, he incorporated a limited company in his wife's name and solicited the customers of the company. The company brought an action against him. The Court of appeal was of the view that "the company was formed as a device, a stratagem, in order to mask the effective carrying on of business of Mr. Horne" in this case it was clear that the main purpose of incorporating the new company was to perpetrate fraud. Thus the Court of appeal regarded it as a mere sham to cloak his wrongdoings.

In the second case of Jones v. Lipman, a man contracted to sell his land and thereafter changed his mind in order to avoid an order of specific performance he transferred his property to a company. Russel judge specifically referred to the judgments in Gilford v. Horne and held that the company here was "a mask which (Mr. Lipman) holds before his face in an attempt to avoid recognition by the eye of equity" .Therefore he awarded specific performance both against Mr.Lipman and the company.

FOR BENEFIT OF REVENUE-"The Court has the power to disregard corporate entity if it is used for tax evasion or to circumvent tax obligations. A clear illustration is Dinshaw Maneckjee Petit, Re;

The assesse was a wealthy man enjoying huge dividend and interest income. He formed four private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts

of the company but the company handed back the amount to him as a pretended loan. This way he divided his income into four parts in a bid to reduce his tax liability.

But it was held that, "the company was formed by the assessee purely and simply as a means of avoiding super tax and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans".

ENEMY CHARACTER-A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the Court may examine the character of persons in real control of the company, and declare the company to be an enemy company. In Daimler Co.Ltd V. Continental Tyre And Rubber Co.Ltd, A company was incorporated in England for the purpose of selling in England, tyres made in Germany by a German company which held the bulk of shares in the English company. The holders of the remaining shares, except one, and all the directors were Germans, residing in Germany. During the First World War, the English company commenced action for recovery of a trade debt. Held, the company was an alien company and the payment of debt to it would amount to trading with the enemy, and therefore, the company was not allowed to proceed with the action.

WHERE THE COMPANY IS A SHAM- The Courts also lift the veil where a company is a mere cloak or sham (hoax).

COMPANY AVOIDING LEGAL OBLIGATIONS- Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

SINGLE ECONOMIC ENTITY- Sometimes in the case of group of enterprises the Salomon principal may not be adhered to and the Court may lift the veil in order to look at the economic realities of the group itself. In the case of D.H.N.food products Ltd. V. Tower Hamlets, it has been said that the Courts may disregard Salomon's case whenever it is just and equitable to do so. In the above-mentioned case the Court of appeal thought that the present case was one which was suitable for lifting the corporate veil. Here the three subsidiary companies were treated as a part of the same economic entity or group and were entitled to compensation.

Lord Denning has remarked that 'we know that in many respects a group of companies are treated together for the purpose of accounts, balance sheet, and profit and loss accounts. Gower too in his book says, "There is evidence of a general tendency to ignore the separate legal group". However, whether the Court will pierce the corporate veil depends on the facts of the case. The nature of shareholding and control would be indicators whether the Court would pierce the corporate veil. The Indian Courts have held that a 'single economic unit' argument could work in certain circumstances. These circumstances would depend on the factual control exercised. This view is strengthened by the Supreme Court decision (cited in Novartis v. Adarsh Pharma) in New Horizons v. Union of India. State of UP v. Renusagar was decided in 1988. Back in the year 1988 also, in Renusagar case, the Court proceeded, on the basis of prior English law which had accepted the 'single economic unit' argument. Thus, Renusagar case seems to support the conclusion that a 'single economic entity' argument would succeed in India for lifting the corporate veil.

AGENCY OR TRUST- Where a company is acting as agent for its shareholder, the shareholders will be liable for the acts of the company. It is a question of fact in each case whether the company is acting as an agent for its shareholders. There may be an Express agreement to this effect or an agreement may be implied from the circumstances of each particular case. In the case of F.G.Films ltd, An American company financed the production of a film in India in the name of a British company. The president of the American company held 90 per cent of the capital of the British company. The Board of trade of Great Britain refused to register the film as a British film. Held, the decision was valid in view of the fact that British company acted merely as he nominee of the American Company.

AVOIDANCE OF WELFARE LEGISLATION- Avoidance of welfare legislation is as common as avoidance of taxation and the approach of the Courts in considering problems arising out of such avoidance is generally the same as avoidance of taxation. It is the duty of the Courts in every case where ingenuity is expended to avoid welfare legislation to get behind the smokescreen and discover the true state of affairs.

PUBLIC INTEREST- The Courts may lift the veil to protect public policy and prevent transactions contrary to public policy. The Courts will rely on this ground when lifting the veil is the most 'just' result, but there are no specific

grounds for lifting the veil. Thus, where there is a conflict with public policy, the Courts ignore the form and take into account the substance.

Statutory Provisions For Lifting The Veil-

REDUCTION OF NUMBER OF MEMBERS- Under Section 45 of The Indian Companies Act, 1956, if a company carries on business for more than six months after the number of its members has been reduced to seven in case of a public company and two in case of a private company, every person who knows this fact and is a member during the time that the company so carries on business after the six months, becomes liable jointly and severally with the company for the payment of debts contracted after six months. It is only that member who remains after six months who can be sued.

FRAUDULENT TRADING- Under Section 542 of The Indian Companies Act, 1956, if any business of a company is carried on with the intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, who was knowingly a party to the carrying on of the business in that manner is liable to imprisonment or fine or both. This applies whether or not the company has been or is in the course of being wound up. This was upheld in Delhi Development Authority v. Skipper Constructions Co. Ltd. (1997).

MISDESCRIPTION OF THE COMPANY- Section 147 (4) of The Indian Companies Act, 1956, provides that if any officer of the company or other person acting on its behalf signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the companies name is not mentioned in legible letters, he is liable to fine and he is personally liable to the holder of the instrument unless the company has already paid the amount.

PREMATURE TRADING- Another example of personal liability is mentioned in Section 117 (8) of The English Companies Act. Under this section a public limited company newly incorporated as such must not “do business or exercise any borrowing power” until it has obtained from the registrar of companies a certificate that has complied with the provisions of the act relating to the raising of the prescribed share capital or until it has re-registered as a private company. If it enters into any transaction contrary to this provision not only are the company and it’s officers in default , liable to pay fines but if the company fails to comply with its obligations in that connection within 21 days of being called upon to do so, the directors of the

company are jointly and severally liable to indemnify the other party in respect of any loss or damage suffered by reason of the company's failure.

FAILURE TO REFUND APPLICATION MONEY-According to Section 69(5) of The Indian Companies Act, 1956, the directors of a company are jointly and severally liable to repay the application money with interest if the company fails to refund the money within 130 days of the date of issue of prospectus.

HOLDING AND SUBSIDIARY COMPANIES- In the eyes of law, the holding company and its subsidiaries are separate legal entities.

But in the following two cases the subsidiary may lose its separate entity-

1.Where at the end of its financial year, the company has subsidiaries, it must lay before its members in general meeting not only its own accounts, but also attach therewith annual accounts of each of its subsidiaries along with copy of the board's and auditor's report and a statement of the holding company's interest in the subsidiary.

2.The Court may, on the facts of a case, treat a subsidiary as merely a branch or department of one large undertaking owned by the holding company.

Conclusion-

Thus it is abundantly clear that incorporation does not cut off personal liability at all times and in all circumstances. "Honest enterprise, by means of companies is allowed; but the public are protected against kitting and humbuggery". The sanctity of a separate entity is upheld only in so far as the entity is consonant with the underlying policies which give it life.

Thus those who enjoy the benefits of the machinery of incorporation have to assure a capital structure adequate to the size of the enterprise. They must not withdraw the corporate assets or mingle their own individual accounts with those of the corporation. The Courts have at times seized upon these facts as evidence to justify the imposition of liability upon the shareholders.

The act of piercing the corporate veil until now remains one of the most controversial subjects in corporate law. There are categories such as fraud, agency, sham or facade, unfairness and group enterprises, which are believed to be the most peculiar basis under which the Law Courts would pierce the corporate veil. But these categories are just guidelines and by no means far from being exhaustive.

Majority Rule In Company Law

In today's world it is observant that the place of a nation is being taken by a corporation, it is essential to find common ground between the company's members, both those in the minority and those in the majority, just as it is in any other democratic society. With practically all of the main developing legal systems following the same pattern, the rule of majority has been institutionalised as an embedded component of the firm under common law, which is a form of law that originated in England.

The rule of majority has put the company's majority equity shareholders in a dominant position as opposed to the vulnerable minority members. This has the effect of tipping the scales in favour of the majority equity shareholders. The modern company law faces a significant obstacle in the form of the protection of minority members in the area of company administration.

The goal of the legislations must be to strike an equilibrium between the rights of majority and minority shareholder's, which is essential for the better orientation of the company. The fundamental idea of providing the greatest benefit to the largest possible number of individuals is where the concept of striking a balance between competing interests originates.
t should be exercised to curb the misuse of power and domination by the majority members in accordance with the general policy to safeguard the interests of the minority members from the unjust behaviour of the majority members. This policy is intended to defend the interests of the minority members.

Because it does not have the approval of the majority of shareholders, the court has ruled in many instances that an action initiated by a single shareholder cannot be heard. This is due to the fact that the majority of shareholders have the ability to give up their right to sue the company.

Therefore, a corporation can only file a lawsuit:

I. If the directors of the company adopt a resolution to do so, or

II. If the company passes an ordinary resolution in general meeting saying that it wishes to file a lawsuit.

Both of these options require a majority vote of the company's shareholders.

This is because shareholders have the same power as directors to drag the company into court as a claimant, and if shareholders want to drag the company into court but directors don't, shareholders have the right to do so. This is because shareholders have the same power as directors to drag the company into court as a claimant. In the eyes of the law, the corporation is a person.

Under the Section 910 of the Act, a company incorporated under law has the "power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by its name" as it is a separate legal entity. The court time and again in plethora of cases held that since a company is a persona in the eyes of law, the action is vested in it altogether, and cannot be exercised by a single individual member.

To analyse and compare the application of the Foss rule in the Indian context to that its origin countries, we need to examine the principle, in the countries of its origins. The genesis of this rule was to establish a ground basis for the shareholder's power revolving around single individual enterprise and including a huge chunk of small shareholders.

The Hon'ble Court in the case of ICICI v. Parasrampuria Synthetic Ltd. SCL13 held that, in India the circumstances are different from the other countries. In India, the corporate enterprises are not the result of different investments of small and medium investors but majorly state-sponsored funding structure that procures funds from financial institutes.

If the rule laid in the Foss case is applied as it is in India, it may lead to submitting weightage to the majority of the shareholders holding more percent shares, over the financial institutions which might have a lesser percent of shares even though contribution majority in terms of the finances. Such financial institutions actually procure and bring in the finance for the functioning of the company and, thus, to render such institutional investors voiceless on a mechanical application of the rule laid in Foss could be unfair and unjust in India.14

The rule in Foss v. Harbottle19 is not absolute but is subject to certain exceptions. In other words, the rule of supremacy of the majority is subject to certain exceptions and thus, minority shareholders are not left helpless, but they are protected by:

a.The common law; and

b.The provisions of the Companies Act, 2013.

The cases in which the majority rule does not prevail are commonly known as exceptions to the rule in Foss v. Harbottle20 and are available to the minority. In all these cases an individual member may sue for declaration that the resolution complained of is void, or for an injunction to restrain the company from passing it. The said rule will not apply in the following case:

Ultra Vires & Illegal Acts

The Foss rule is not applicable where the act against which the suit is institutes is ultra vires the company, 21 because not even a majority vote of the shareholders can approve an act that is ultra-vires. In these cases, the plaintiff member of the company may institute either an individual suit, for the company's violation of its memorandum, or a collective derivative action, for the wrong committed against the company for the violators who have committed the ultra vires act.22

Breach of Fiduciary Duty

A derivative action may be brought up by the minority shareholder against the directors of the company who have been found guilty of a breach of their fiduciary duties to the company, if they are able to stall the company from litigating against them in the company's name as the director control a majority of the votes of shareholder at a general meeting, or if the directors are able to prevent a general meeting from passing a resolution that the company shall sue them.

Therefore, the derivative actions have been allowed against the directors who are in control of the company for misappropriating the property of the company23 or misapplying it in breach of the Companies Act,24 to hold such directors accountable to the company for profits made by misappropriating for themselves a business opportunity which the company and other shareholders would have enjoyed.25

In the case of, Satya Charan Lal v. Rameshwar Pd. Bajoria,26 it was held by the Hon'ble Court that when a director breaches the fiduciary duty, every shareholder of the company has as an authorised organ to bring the action.

Fraud or Operation against Minority

In the case of Edward v. Halliwell, 27 the Hon'ble Court held that,: Where the majority of a company's members use their power to defraud or oppress the minority, their conduct is liable to be impeached even by a single shareholder.28

The oppression or fraud should involve an unconscionable use of the majority's power resulting, either in in unfair or discriminatory treatment of the minority or financial loss, and the same shall be grave than the mere failure of the majority members to do something for the interest of the company as a whole.29 Fraud includes all such cases where the perpetrators are endeavouring, directly or indirectly, to appropriate to themselves money, property or advantages which belong to the company or in which the other shareholders are entitled to participate.30

Inadequate notice for a Resolution passed at a meeting of members
It is held in plethora of judgments that if an insufficiently informative notice is given of a resolution to be proposed at a general meeting, a member who did not attend the meeting, or who has voted against the resolution, can bring a representative action to restrain the from carrying out the resolution.31

Qualified Majority
When the Act or the articles mandates a qualified (special) majority for passing of a resolution, the rule of majority cannot be invoked to override these requirements. If not for this, the provisions of qualified majorities would be of no value as a simple majority can always concur a special resolution passed irregularly.

Principle of Contributory Negligence

Donogue v. Stevenson (1932) AC. 562

Every law student has almost mandatorily heard about the famous case of Donoghue v. Stevenson (1932) or the “the snail in the bottle” case. It was not only a landmark judgment in the evolution of common law but also extremely pertinent to the development of tort law, a branch of law that, till today, houses numerous ambiguities. The revolutionary significance of the

decision in the case is in the establishment of a standardized duty of care in negligence cases and the "neighbour principle" as set forth by Lord Atkin.

A brief overview of the tort of negligence

I often hear from our seniors and well-wishers to not be negligent in studies, work, or daily tasks. In the legal sense, negligence has a deeper meaning and constitutes an actionable tort. Some questions could arise like whether due to an individual's negligent behavior that causes them to commit an act or omission, the individual could inflict risk or hamper the well-being of an individual or a group of individuals.

Negligence is one of the most prominent principles in the law of torts. It refers to an individual's conduct that could be classified as either unreasonable or careless conduct or breach of a legal duty to take due care, which subsequently causes harm to an individual.

In several cases, the courts have given recognition to a duty of care existing due to some relationship between the parties. For example, a doctor and patient, employer and employee, manufacturer and consumer, one road-user to another, etc.

There are three pertinent essentials of this particular tort:

1. The defendant had a duty of care towards the plaintiff
2. There was a subsequent breach of that duty
3. The plaintiff suffered damages as a consequence of the breach

According to Professor Winfield- "Negligence as a tort is the breach of duty to take care which results in damages."

Let us look at the first case, Donoghue v Stevenson (1932), that introduced the doctrine of negligence that has been widely discussed and been a topic of discourse by eminent jurists, scholars, and law students all across the world. The landmark judgment has been credited as laying the foundation for the liability of the manufacturer in common law to the end-consumer.

Products could be classified into two categories: dangerous and not dangerous. However, there is a fine line of distinction that varies from case to case. Scrutton LJ confessed that he did not understand the difference: "Between anything dangerous in itself, like poison, and a thing not

dangerous as a class, but by negligent construction dangerous as a particular thing. The latter, if anything, seems to be the more dangerous of the two; it is a wolf in sheep's clothing instead of an obvious wolf."

Facts of the case

On the 26th of August, 1928, Mr Minchella purchased a ginger beer bottle from Wellmeadow Cafe in Paisley (Scotland) for his friend, Mrs Donoghue, the appellant. The ginger beer bottle was made of dark opaque glass, and thus, there was no reason to suspect that the bottle might have contained anything other than ginger beer.

After consuming almost half of the contents of the bottle, when the rest of the ginger beer was poured into a tumbler, dead, decomposed remains of a snail floated into it. The nauseating sight coupled with the consequences of ingesting the impurities in the bottle caused shock and severe gastro-enteritis to the appellant.

The case was first filed in the Second Division of Sessions Court of Scotland where an interlocutor was issued by Lord Ordinary for proof after a good cause of action of the petitioner was found. But subsequently, another interlocutor by the majority was issued recalling the previous interlocutor and the action was dismissed. An appeal was then filed in the House of Lords.

Legal background

The general principle established till then was that the manufacturers owed no duty of care to anyone with whom they are not in contractual relation. However, this general rule had two exceptions-

1. The article is dangerous per se.
2. The dangerousness of the article was known to the manufacturer but said knowledge was deliberately concealed.

In the present scenario, since the appellant was unable to claim compensation due to the breach of contract (no contract existed between the appellant and the manufacturer as the appellant's friend had originally purchased the bottle), she submitted that Stevenson, the respondent, had breached the duty of care and caused legal injury through negligence.

Most cases, with a comparable fact scenario, had till then rejected the claims of compensation, asserting no duty of care arose without the presence of a contract. The only exception was George v. Skinvington (1869), where it was held that ordinary care was owed to persons using the product even in lack of a contractual relationship.

An important point to be noted is that even though the case was based in Scotland, English laws were used to deliver the judgment regarding the issue at hand, existing Scottish and English law concurred.

Prominent issues raised

The following issues were raised in this case:

1. Was the manufacturer of the ginger beer aware of the defect in the product that made it unfit to consume and was it fraudulently concealed from the consumer?
2. Could the product be classified as dangerous per se and was there a failure on part of the manufacturer to warn the consumer of the same?
3. Would an action of negligence be applicable in light of the fact that there was no contract formed between the plaintiff and the manufacturer?

The arguments

Appellants

The ginger beer bottle was manufactured and sold to the public for consumption by the respondent- the bottle bore labels of the respondent's company, and it was by the respondent who used metal caps to seal them.

The respondent, as manufacturers should have ensured that-

1. A system was in place to ensure snails would not get into their packaged products.
2. An efficient system of inspection was there to conduct checks before the bottles were sealed.

According to the appellants, the respondents failed in both these duties and caused this accident. Since the respondent invited the public (including the appellant) to consume a product they manufactured, bottled, labelled, and sealed and offered no opportunity to the consumer to examine their contents, they owed a duty of care to the appellant to ensure nothing in the bottle would injure such a consumer.

Moreover, the appellants contended that the principle of res ipsa loquitur was applicable in the present scenario. The fact that there was a snail in the bottle 'spoke for itself' the negligence of the manufacturers.

Finally, the appellants said that the exceptions to the general principle mentioned above were too strict and limited.

The appellants primarily cited the following to support their claim-

1. George v. Skivington (1869)– This was an exceptional case that had held that ordinary care was owed to persons using the product even in lack of a contractual relationship,
2. Sir Brett M.R.'s observation in Heaven v. Pender (1883) where he observed that "Whenever a reasonable person would foresee that harm would be caused if he did not use reasonable care and skill he owes a duty in tort" and,
3. Lord Denuedin's observations in Dominion Natural Gas v. Collins and Perkins (1909) stated that those who sent out to everyone inherently dangerous articles were subject to a common law duty to take precautions.

Respondents

The respondents claimed that the allegations of injury to the appellant were exaggerated and not as a cause of the alleged snail but due to existing health problems. Hence, the allegations were irrelevant and insufficient to constitute a proper ground for a summons.

Moreover, they sought to prove that the appellants had no legal basis for the given claim by primarily citing the following cases-

1. Mullen v. AG Barr & Co Ltd. (1929): The scenario, in this case, was almost similar to the case in question, except dead mice were discovered instead of a snail. The Scottish Sessions Court dismissed

the case due to the absence of a contractual relationship and used that precedent to dismiss the present case as well.

2. Winterbottom v. Wright (1842): In this case, the issue of contention was whether the manufacturer owed any duty of care to a third party and the judgment was given in negative.

3. Blacker v. Lake & Elliot, Ld (1912): Hamilton J. observed here that breach of duty in the contract does not give any cause of action to third parties.

The respondents further contended that although most of the relevant precedents dealt with non-food items, there was no logical reason why they would not apply to food items as well.

Final judgment

The outcome of the judgment, was by 3:2 majority, decided for the appellant, Mrs. Donoghue. Lord Atkin, leading the judgment, declared that in the present case there was clear duty of care to Mrs. Donoghue.

It was held that-

1. The manufacturer owed a duty of care to all end-consumers of their product

2. The said liability could arise if and only if there was no way of intermediate inspection of the product, and thus injury was a proximate cause of breach of duty.

3. The manufacturer did not owe any contractual duty towards the appellant (in line with established doctrine of privity of contract) but at the same time owing to the appellant a general duty of care to ensure the integrity of the said product.

Lord Thankerton and Lord Macmillan concurred.

Lord Buckmaster and Lord Tomlin presented a dissenting opinion on the grounds that the appellant's case went against the already established principles. Lord Buckmaster pointed out the importance of retaining the distinction of dangerous and non-dangerous products and implored the application of the exception to only those objects which were inherently dangerous.

Moreover, both these judges denied the legitimate authority of George v. Skivington (1869) and expressed concern over the cascade of cases that might ensue if the ambit of liability of the manufacturers was widened. Lord Buckmaster said that it would be socially and economically irresponsible to affix such a wide liability on the manufacturing sector. Lord Tomlin was of the view that such a feat was logically impossible.

Establishment of legal principles

This case garnered widespread importance due to the three basic legal principles it established-

Negligence

The tort of negligence as a distinct tort was properly established by this case. Previously, there was a need to prove the presence of the contract and its breach to constitute a negligent act. However, after this case, one had to prove breach of duty or omission to do something according to standards of a reasonable man (no need for a contract) and consequent legal injury to satisfactorily sue for negligence.

Duty of Care

Lord Atkin observed "…a manufacturer of products, which he sells…to reach the ultimate consumer in the form which left him…owes a duty of care to the consumer". In other words, the manufacturer owes a duty of care to all their possible consumers. This precedent was thus able to initiate numerous avenues in consumer protection and consumer rights.

The "neighbour" principle

Lord Atkin developed this principle to determine the individuals to which duty of care was owed. He called such individuals "neighbours". These neighbours could be determined by the doctrine of reasonable foreseeability- only those individuals who could be reasonably foreseen to be affected by a person's actions could claim damages in case of injury due to said person's actions.

Atkin said, “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

The implications

Thus, through the case law of Donoghue v. Stevenson, crucial principles required to establish liability- degree of duty of care and the neighbour principle got introduced in the still-nascent field of early 20th-century tort law.

One of the most glaring aspects that come to light on the reading of the original judgment of Donoghue v. Stevenson (1932) is the stark contrast between the judgments of Lord Atkins and Lord Buckmaster. Both of them reached opposite opinions from the same fact scenario, a situation which is a fine indicator of the rising complexities the legal system was facing.

On one hand, there were the already established principles of common law which as Lord Buckmaster stated “cannot be changed nor can additions be made to them because any particular meritorious case seems outside their ambit.” Accordingly, Lord Buckmaster gave his judgment which did not deviate from these principles.

On the other hand, there was Lord Atkin who reiterated the immense role that judges play in protecting the rights of citizens by ensuring the development of a principle that reoriented the concept of liability from negligence. As a result, he played a vital role in changing the perspective of how common law works, as well as, in the inevitable evolution of tort law.

One of the driving forces of the decision in favour of the appellant was the need for justice even when law per se was contradictory to it. This case thus highlighted the changing dynamics of the concepts of law and justice and was a good example of a situation where justice takes the front seat instead of law.

Conclusion.

Donoghue v. Stevenson thus successfully sets a benchmark for the standard of duty of care. However, with increasing legal convulsions, the set standard started becoming too simple. A more elaborate three-step neighbour test was established in Caparo Industries Plc v. Dickman (1990). The test, however, had its basis in the original principle of Lord Atkin. Other cases have further developed this principle.

Hence, the significance of this case cannot be understated. This case is still quoted, one recent example being *The Managing Director, Kerala Tourism Development Corporation Ltd. v. Deepti Singh and Ors. (2019)* in the Supreme Court of India.

Yet, many scholars criticize the continuing fanfare regarding this case, observing that the principles established are too basic. However, it is precisely this reason that the author believes there is a need to exhaustively study the given case law. As cases become more complex, it can be safely concluded that there is a profound need to go back to the basics and study all those that are now taken for granted.

Reps Ipsa Loquitor

Gulli v. Swan

Byrne v. Boadle (1863)2 HBE 722

Brief Fact Summary.

Byrne (Plaintiff) testified that he was walking along Scotland Road when he evidently lost consciousness. Witnesses testified that a barrel of flour fell on him. Neither Plaintiff nor any of the witnesses testified as to anything done by Boadle (Defendant) that could have led to the barrel falling.

Synopsis of Rule of Law.

A plaintiff must persuade a jury that more likely than not the harm-causing event does not occur in the absence of negligence. The plaintiff does not have to eliminate all other possible causes for the harm, nor does the fact that the defendant raises possible non-negligent causes for the harm defeat

plaintiff's effort to invoke res ipsa loquitur (Latin for "the thing speaks for itself). The key is that a reasonable jury must be able to find that the likely cause was negligence.

Facts.

Defendant's shop was adjacent to the road on which Plaintiff was walking, and the barrel appeared to have fallen, or was dropped from the shop.

Issue.

Was the mere fact of the incident occurring, i.e., the barrel having fallen from the shop, sufficient to presume negligence?

Held.

The court allowed the case to proceed because of the nature of the harm-causing event and Defendant's relationship to it, i.e., as it was Defendant's responsibility to control the contents of his warehouse, the accident itself is evidence of negligence.

Discussion.

A plaintiff seeking to rely on res ipsa loquitur must connect the defendant to the harm. Initially, courts interpreted the control element narrowly, requiring the plaintiff to show that the defendant likely had "exclusive control" over the harm-causing instrumentality. This element has been liberalized and it is now enough for a plaintiff to get the issue to a jury on res ipsa loquitur if he can provide evidence showing that the defendant probably was the responsible party even if the defendant did not have exclusive control. Further, most jurisdictions no longer require the plaintiff to prove that he did not contribute to his harm.

Principle of Remoteness of Damages :

Scott v. Shephard 96 Eng. Rep. 525 (K.B. 1773)
Re Polimis v. Wagon Mound case [1961] AC 388 House of Lords

Introduction

In the Law of Torts, 'Remoteness of Damage' is an interesting topic. The general principle of law requires that once damage is caused by a wrongful

act, liabilities have to be assigned. But, as many cases have shown, assigning liabilities is not always a simple task at hand.

Once a wrongful act has been committed (tort), it can have multiple consequences. The consequences can have further consequences. These 'consequences of consequences' can become a long chain and at times the problem of the liability of the defendant comes up. The question that this particular topic deals with is "How far can the defendant's liability be stretched for the '*consequences of consequences*' of the defendant's tort?"

To a first-time-reader, this whole concept of 'consequences of consequences' would sound confounding. Therefore, in order for us to appreciate the problem better, we may look at a simple example.
In this simple example, we see that the defendant who was a cyclist negligently hits a pedestrian. Incidentally, the pedestrian happened to be carrying a bomb. And due to the negligence of the defendant, the pedestrian falls and the said bomb explodes, resulting in the death of that pedestrian. Now, due to the explosion of the bomb, a nearby building catches fire and five of its residents die. As a result of the fire, the building collapses and nearby structures are destroyed, resulting in 20 more deaths. Further, the destruction of nearby shops results in pecuniary losses to the shop owners.

Although one would tend to easily dismiss this example as too far-fetched, it is not difficult to see that similar cases resembling this particular domino effect can exist and that their existence can create questions of legal importance.

In the above example itself, we can see how a tort of negligence committed by the defendant can result in consequences that were neither intended by the defendant nor comprehended by him beforehand. Such a situation creates question for assigning blame. Even if the Court were of the opinion that the defendant was to be blamed for the death of the pedestrian, would the Court also unhesitatingly place the same amount of the blame on the defendant for the death of the other 25 people?

The problem is also explained by Lord Wright, to some extent, in the case of Liesbosch Dredger v. S.S. Edison:

"The Law cannot take account of everything that follows a wrongful act; it regards some subsequent matters as outside the scope of its selection, because it was infinite of the law to judge the causes of causes, or consequences of consequences. In the varied web of affairs, the law must abstract some consequences as relevant, not perhaps on grounds of pure logic but simply for practical reasons."

To answer such questions, jurists propose that a defendant should be made responsible only for the consequences which were ***proximate*** (and not *remote*) consequences of the defendant's wrongful act.

Proximate and Remote Damage

Just as Lord Wright has pointed it out, we have to draw a line for practical purposes. Now, the question that arises is where exactly is this line to be drawn?

To answer this question, we look at a test known as 'the test of remoteness'. With this test, we check if the damage is 'too remote a consequence' of the wrongful act or not?

Few Illustrations for Proximate and Remote Damage

Scott v. Shepherd (The Squib Case)

In this case, a person A threw a lighted squib into a crowd. The squib fell on a person B. B, in order to prevent injury to himself, threw that squib further. It landed on another person C, who in turn threw it further and it finally exploded on a person D, thereby injuring him. As a result of the explosion, D lost one of his eyes.

In this case, A was held liable to D. Although one would say that his act was 'the farthest from the injury to D', his act was held to be a *proximate cause* of the injury to D.

Haynes v. Harwood

In this historically famous case, the servants of the defendant, owing to their negligence abandoned a horse van on a crowded street. The street had children and women. Some children pelted stones at the horses, as a result of which the horses bolted and started posing a threat to the safety of the people in the street. In order to stop the horses and to rescue the women and children, a policeman (the plaintiff here) suffered injuries himself.

In a lawsuit brought by the plaintiff against the defendant, one defence pleaded was that of *novus actus interveniens* (remoteness of consequences).

Again, in this case, the Court held that *novus actus interveniens* was not a valid defence and that the negligent act of the defendant's servants leaving the horse van unattended as the *proximate cause* of the injury suffered by the plaintiff.

Lynch v. Nurdin

This case is similar to the previous one to a certain degree. Here, the defendant left his horse-cart unattended on a road. Some children began playing with the said horse-cart. One child sat on the cart (the plaintiff) and another set the horse in motion. Consequently, the child suffered damage and an action was brought.

In this case too the defence of *novus actus interveniens* was pleaded. But again, it was held by the Court that the injury to the plaintiff was a *proximate consequence* of the defendant's act and hence he would be held liable to the plaintiff.

Two Tests of Remoteness

Now that we have seen that the law deems a person liable for the injuries caused which were *proximate* consequences of that person's act, one might ask about the parameters on which the Court decides which act is a proximate one and which one remote.

To answer this question, we see two *tests of remoteness* during the course of legal history:

1. Test of reasonable foresight; and

2.Test of directness.

Test of Reasonable Foresight

According to this test, if the consequences of a wrongful act could have been foreseen by a reasonable man, they are not too remote.

Pollock was an advocate of this test of remoteness. He opined, in cases Rigby v. Hewitt and Greenland v. Chaplin, that the "liability of the defendant is only for those consequences which could have been *foreseen by a reasonable man placed in the circumstances of the wrongdoer.*"

But here we must note that it would not be a sufficient defence in itself to say that the defendant did not foresee the consequences. Instead, it would be for the Court to decide, upon the standards of reasonability, whether the consequence should have been foreseen by the defendant or not.

Test of Directness

According to the test of directness, a person is liable for all the **direct consequences** of his act, whether he could have foreseen them or not; because consequences which directly follow a wrongful act are not too remote.

Further, according to this test, if the defendant could foresee any damage, he will be liable for all the direct consequences of his wrongful act. To understand this particular test of remoteness better, it would suffice to look at the Re Polemis Case.

Re Polemis and Furness, Wilthy & Co.

This case, popularly referred to as the *Re Polemis Case*, was the landmark case on the test of directness. The Courts of Appeal held the test of reasonable foresight to be the relevant test whereas later the Privy Council upheld the test of directness.

The relevant facts of the case are that the defendants chartered a ship to carry cargo. The cargo included a quantity of Petrol and/or Benzene in tins. There was a leakage in the tins and some oil was collected in a hold of the ship. Now, owing to the negligence of the defendant's servants, a plank fell in

the hold and consequently sparks were generated. As a result of those sparks, the ship was totally destroyed by fire.

In this case, the Privy Council held the owners of the ship entitled to recover the loss, although such a loss could not have been foreseeably seen by the defendants. It was held that since the fire (and the subsequent destruction of the ship) was a **direct** consequence of the defendant's negligence, it was immaterial whether the defendant could have reasonably foreseen it or not. As per Scrutton, L.J.:

"Once an act is negligent, the fact that its exact operation was not foreseen is immaterial."

This test of reasonable foresight lost its popularity to the test of directness. But, as we shall see later, it managed to regain currency among jurists.

Wagon Mound Case: The Re-affirmation of the Test of Reasonable Foresight

The test of directness that was upheld in the Re Polemis case was considered to be incorrect and was rejected by the Privy Council 40 years later in the case of **Overseas Tankship (UK) Ltd. v. Morts Dock and Engg. Co. Ltd.**, also popularly known as the ***Wagon Mound Case***.

The facts of this case are as follows:

The *Wagon Mound* was a ship which was chartered by the appellants (Overseas Tankship Ltd.). It was taking fuel at a Sydney port at a distance of about 180 metres from the respondent's wharf. The wharf had some welding operations going on in it. Owing to the negligence of the appellant's servants, a large quantity of oil was spilt on the sea which also reached the respondent's wharf. Due to the welding operations going on there, molten metal (from the respondent's wharf) fell, which ignited the fuel oil and a fire was caused. The fire caused a lot of damage to the respondent's wharf and equipment.

In this case, the trial court and the Supreme Court held the appellants liable for the damage to respondents based on the ruling in Re Polemis. But when the case reached the Privy Council, it was held that Re Polemis could not be considered good law any further and thus the decision of the Supreme Court was reversed. It was held that the appellants could not have reasonably

foreseen the damage to the respondent and therefore were not liable for the damage caused.

In the case Lord Viscound Simonds observed:

“It does not seem consonant with current ideas of justice or morality that, for an act of negligence, … the actor should be liable for all consequences, however unforeseeable.”

They also maintained that “according to the principles of civil liability, a man must be considered to be responsible only for the probable consequences of his act”.

And therefore with this case, the test of reasonable foresight regained its authority to determine the remoteness of damage and subsequently the liability of a person for the damage caused by him in cases of tort.

Wagon Mound Ruling Followed in Subsequent Cases

Hughes v. Lord Advocate

In this case, workers employed by the Post Office left a manhole in the road unattended. Before they left the site, they covered the manhole with a tarpaulin entrance and placed several paraffin lamps around it. The 8-year-old plaintiff, attracted by the lamps, was playing around the manhole along with another child. One of the lamps was knocked down, causing an explosion in the manhole. The explosion resulted in damage to the plaintiff.

In this case, the Court held that even though the explosion was not foreseeable by the servants of the Post Office, the type of the damage (burns) was. Therefore, the defendants were held liable.

Doughty v. Turner Manufacturing Co. Ltd.

In this case, the plaintiff was employed by the defendant. Owing to the negligence of other workmen employed by the defendant, an asbestos cover slipped into a cauldron of molten hot liquid. The resulting explosion caused injury to the plaintiff, who was standing nearby.

It was held that the damage which resulted from the explosion was not such that could have been reasonably foreseen by the defendant, and therefore

the defendant's negligence was not a proximate cause of the damage to the plaintiff. The defendants were held not liable.

S.C.M. (UK) Ltd. v. W.J. Whittall & Sons

The Court of Appeals applied the test of reasonable foreseeability in this case. In this case, due to the defendant's workers' negligence, an electric cable was damaged. As a result of this damage, a long power failure followed in the plaintiff typewriter factory. Consequently as a result of this power failure, the plaintiff alleged that there had been a loss of production and damage to his factory's machines.

The Court in this case held that the defendants were aware of the fact that the said electric cable used to supply power to the plaintiff's factory, and that they could have reasonably foreseen that any such power failure would lead to significant loss to the plaintiff. And hence, the plaintiff was entitled to damages.

Death Sentence for Murder : Rarest of Rare Cases :

Bachchan Singh v. State of Punjab (AIR 1980 SC 898)

This is a landmark case (AIR 1980 SC 898, 1980) decided by a five-judge bench of the Supreme Court consisting of, Justice Y.C. Chandrachud, Justice A. Gupta, Justice N. Untwalia, Justice P.N Bhagwati, and Justice R. Sarkaria. The Supreme Court announced significant limitations on the death penalty in this case by establishing the "rarest of the rare" doctrine.

A genuine and abiding concern for the dignity of human life presupposes resistance to taking a life through the instrumentality of law," the Supreme Court stated. That should be done only in the rarest or most rare cases where the alternative opinion is unquestionably foreclosed."

Facts of the Case:

Bachan Singh, the appellant, murdered her wife, and he was found guilty and sentenced to life in prison. After serving his prison sentence (i.e., after his release), the appellant lived with his cousin Hukam Singh and his family. Following that, Bachan Singh was charged, convicted, and sentenced to death for the murders of Desa, Durga, and Veeran, a Sessions Judge in the case, under Section 302 of the Indian Penal Code. The Punjab High Court upheld the sessions court's death sentence and denied his appeal. Bachan

Singh then petitioned the Supreme Court, which granted him Special Leave. The appeal raised the question of whether Bachan Singh's case constituted "special reasons" for imposing the death penalty, as required.

Issues Raised:

1.Whether the death penalty provided for murder in Section 302 of the Indian Penal Code is unconstitutional?

2.If the answer to the above question is negative, whether the sentencing procedure mentioned in Section, 354(3) of the CrPC, 1973 is unconstitutional on the ground that it gives unfettered power to Courts, allowing the death sentence to be capriciously imposed on a person found guilty of murder punishable under IPC with death or with imprisonment for life?

3.Whether the facts found by the lower courts would be considered "special reason" for awarding the death penalty as is required under section 354(3) Cr. P.C?

Judgment Review:

The Supreme Court's decision, in this case, is regarded as one of the landmark decisions on the issue of the death penalty. When a death sentence is imposed on someone, it captures the attention of the entire nation. In this case, too, the entire nation was waiting for the Supreme Court's decision, which stated in its majority decision that Section 302 of the Indian Penal Code and Section 354(3) of the Criminal Procedure Code are constitutionally valid. The doctrine of the "rarest of rare cases" for imposing the death penalty is still in use today.

1.Except in the gravest cases of extreme culpability, there is no need to opt for the sentence of death penalty.

2.Before providing the sentence of the death penalty, the judge should consider the circumstances of the crime along with the circumstances of the offender.

3.It was stated by the bench that "*life imprisonment is the rule, whereas death sentence is the exception."* Therefore, we can say that, after looking at

the circumstances of the case, the death penalty should be given only in those cases, where even the penalty of life imprisonment seems inadequate

4.Before exercising the option, a balance sheet containing aggravating and mitigating conditions must be created, with the mitigating circumstances receiving full weightage and a fair balance struck between the aggravating and mitigating circumstances.

In his dissenting opinion, Bhagwati, J. stated that the imposition of the death penalty as an alternative to life imprisonment in Section 302 of the IPC is ultra vires and illegal because it violates Articles 14 and 21 of the Constitution. He took this stance because he believes the contested provision lacks legislative guidance on when an accused's life can be taken by imposing a death sentence.

Bachan Singh v. State of Punjab (1980) is a well-known landmark judgment credited for developing the jurisprudence pertaining to the death penalty. It examined whether the death penalty was in consonance with the provisions of the Indian Constitution.

The main issue that was addressed in this case was whether the procedure prescribed under Section 354(3) of Code of Criminal Procedure,1973 pertaining to sentencing the culprit is unconstitutional. The courts are vested with unguided discretion and it is completely up to them to ascertain whether the death penalty should be imposed or not.

This case has been widely regarded as a landmark judgment given by a bench consisting of 5 judges and is known for establishing the "rarest of the rare" doctrine applicable while determining whether the death penalty is to be awarded to the accused.

We need to address the question that whether 40 years after the judgment, the court successfully created a coherent basis for imposing the death penalty in India.

Death penalty in India

In India, the death penalty is imposed in case of murder, gang robbery coupled with murder, abetting the suicide of an insane person a minor, abetting mutiny by a member of the armed forces, and waging war against

the government. Capital punishment is also awarded under anti-terror laws for those having a significant involvement in committing terrorist acts.

The general approach of the courts is to award the death penalty to the convicts in a murder case. As per the facts and circumstances of the case, it is scrutinized whether the case would fall under the ambit of 'rarest of the rare' cases.

Section 354(3) of the Code of Criminal Procedure

Section 354 of the Code of Criminal Procedure(CrPC), which was added to the Code in 1973 lays down the content and language to be provided in a judgment by the judge.

Section 354(3) states that "When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence". In simple words, Section 354(3) requires a judge to provide 'special reasons' when the convict is punished with death, life imprisonment, or imprisonment for a long tenure.

The sentencing follows conviction and is proportional to the degree and intensity of the crime committed. However, no straitjacket formula is applicable while sentencing the convicts.

Background of the case

There are quite a few judicial pronouncements before the Court gave the judgment in Bachan Singh, regarding whether the death penalty is in lieu of the Constitutional provisions.

In Jagmohan v. State of U.P (1972), the Supreme Court held that Articles 14, 19, and 21 that guarantee the Right to equality, freedom of speech and expression, and the Right to life; did not violate the death penalty. The facts, circumstances, and the nature of the crime committed would be the factors scrutinized by the judge when making the choice between awarding the death penalty or life imprisonment. Therefore, the decision of awarding the

death penalty was made in accordance with the procedure laid down by law as required by Article 21.

In Rajendra Prasad v. State of U.P (1979), the Court held that unless it was shown that the individual is a terrible and continuing threat to social security, capital punishment would not be justified. Justice Krishna Iyer opined that the death penalty should be inflicted in the case of three categories of criminals:

(1) for white-collar offences,

(2) for anti-social offences, and

(3) for eradicating a person who is a threat to society, that is, a seasoned killer.

The Court also held that the death penalty for the murder offence awarded pursuant to Section 302 of the Indian Penal Code,1860 would not be a violation of the Constitutional provisions. In grave cases of extreme culpability, capital punishment can be awarded and the convict's condition must be taken into account.

Provisions involved in the case

1.Section 354 (3) of the CrPC, 1973.

2.Section 302 of the Indian Penal Code, 1860.

3.Article 14 and 21 of the Constitution.

Facts of the case

Bachan Singh was convicted for the offence of committing the murders of Desa Singh, Durga Bai, and Veeran Bai by the Sessions Court. He was given the death penalty under Section 302 of the Indian Penal Code. He appealed in the High Court, however, the Court dismissed his appeal and upheld the death sentence.

He then appealed to the Supreme Court and raised the question of whether the facts of the case would fall under the ambit of the 'special reasons' under Section 354(3) of CrPC, 1973.

Prominent issues raised

1.Whether death penalty that has been provided as the punishment for the offence of murder under Section 302, Indian Penal Code, 1860, is unconstitutional?

2.Whether the sentencing procedure stipulated in Section 354(3) of the CrPC, 1973 is unconstitutional insofar as it vests the courts with unguided and untrampled power, and allows the death sentence to be imposed arbitrarily on an individual found guilty of any offence punishable with death or life imprisonment?

Contentions of the petitioners

The petitioner raised the contention that the death penalty awarded for the offence of murder mentioned under Section 302 of IPC violates Article 19 of the Indian Constitution. The death penalty puts an end to all the freedoms guaranteed under Article 19(a) to (g). No social purpose is served by the death penalty and it does not fall under the purview of unreasonable restriction.

Contentions of the respondents

The respondents contended that an individual must own property in a way that does not infringe the rights of another individual, that is, the principle of sic utere tuo ut alienum non laedas. They further contended that the rights guaranteed under Article 19 are not absolute in nature and are subject to certain reasonable restrictions.

Judgment

The Supreme Court dismissed the appeal in accordance with the majority opinion. The Court dismissed the challenge to the constitutionality of Section 302 of the IPC in so far as it prescribes the death sentence, as well as, the constitutionality of Section 354(3) of the CrPC, 1973 was rejected.

Analysis of the judgment

In the landmark judgment of Maneka Gandhi v. Union of India (1978), the scope and the interrelationship between Articles 14, 19, and 21 were given a new dimension. It was held that every law of punitive detention must pass

the test of all three articles, both in the procedural and the substantive angle.

In A.K. Gopalan v. The State of Madras (1950), all the six learned judges were of the opinion that if the accused was awarded punitive detention or imprisonment after being convicted of committing an offence under the Indian Penal Code, it would be beyond the scope of Article 19.

The Supreme Court dismissed the challenges regarding the constitutionality of Section 302 of IPC and 354(3) of CrPc. The Court further opined that the six fundamental rights guaranteed under Article 19(1) are not absolute in nature.

Firstly, they are subject to restrictions emanating from an obligation of an individual to not use their rights in a way that injures or infringes the rights of the other members of society. This is based on the maxim sic utere tuo ut alienum non laedas, that is, an individual using their property in a manner that does not infringe the legal rights of another individual.

Secondly, under Clauses (2) to (6) of Article 19, these rights are expressly mentioned to be subject to the power of the state, which can impose certain reasonable restrictions. These restrictions could extend to prohibiting the exercise of these rights in special circumstances.

Another issue is whether the courts have untrampled power in imposing the death penalty, and the nature and extent of the special reasons. The expression 'special reasons' as stated in Section 354(3) of the CrPC means exceptional reasons owing to the grave nature of the crime. The Apex Court laid down the doctrine of 'rarest of the rare cases' in awarding the death penalty. Life imprisonment is the rule, and the death sentence is awarded as an exception for those convicted for murder. Exercise of discretion under Section 354(3) of CrPC, 1973 would be exceptional. The death penalty would be awarded only in crimes that shake the collective conscience of society. The imposition of the death sentence should only be in the rarest of rare cases.

Justice Sarkaria stated the following points in the judgment:

(1) The extreme death penalty can be inflicted in the gravest cases of extreme culpability.

(2) Along with the facts and circumstances of the offense, the circumstances of the offender must be taken into account. The court must scrutinize both the crime as well as the criminal, and then decide whether life imprisonment is to be awarded or the death penalty. Accordingly, the presence or the absence of 'special reasons' must be established. Emphasis is to be laid on the aggravating and mitigating factors which are dependent upon the facts and circumstances of the case.

A few parameters were suggested by Dr. Chatale in the judgment for ascertaining 'aggravating circumstances'. He drew inferences from the American penal statutes framed after Furman v. Georgia (1972), in general, and Clauses 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment) Bill that was passed in 1978 by the Rajya Sabha (but was not ultimately enacted). The parameters are as follows:

(a) The murder was pre-mediated and involved extreme brutality; or

(b) The murder involves exceptional depravity; or

(c) A member of any of the armed forces of the Union, or a member of any police force, or any public servant was murdered, while the member/public servant was discharging their duties;

(i) The public servant was discharging their duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of the murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had assisted a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

He further suggested a few mitigating circumstances that the Court should take into account as per their discretion:

(1) The offence was committed by an individual who was extremely mentally or emotionally disturbed.

(2) The age of the accused is to be taken into account. If the accused is a minor, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence that would act as a threat to the well-being of the members of the society.

(4) The probability that the accused can be reformed and rehabilitated. The State would need to prove that the accused does not fulfil conditions 3 and 4 by giving sufficient evidence.

(5) If the accused felt that he was morally justified in committing the act as per the facts and circumstances of the case.

(6) The accused acted under duress or was dominated by another individual's will.

(7) The condition of the accused showed that he was mentally ill and because of the illness, he was not capable of understanding the criminality of his conduct.

Dissenting opinion

Rule of law penetrates the entire fabric of the Indian Constitution. It does not include arbitrariness. Article 14 acts as a guarantee against arbitrariness and prohibits state action, whether legislative or executive, that suffers from a high level of arbitrariness.

Justice PN Bhagwati was of the view that Section 302 of the IPC in so far as it provides for the imposition of the death penalty as an alternative to a life sentence is ultra vires. It is unconstitutional and void since it is an infringement of Articles 14 and 21 of the Constitution and no legislative guidelines are laid down as to when life should be permitted to be extinguished by the imposition of the death sentence.

Another dissenting opinion was that it is difficult to answer the question of whether the death penalty serves any penological purpose. It is a difficult,

complex, and intractable issue. There has been significant discourse on the purposes of the death penalty and whether it serves the purpose of deterrence. A large proportion of people, including sociologists, legislators, jurists, judges, and administrators, from the length and breadth of the country as well as the world, still have averse opinions towards the necessity of imposing capital punishment.

Further, in 1979, India acceded to the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations. India is committed to a policy for the abolition of the death penalty.

The Supreme Court dismissed the appeal in accordance with the majority opinion. It was held that the provision of the death penalty as an alternative punishment for the offence of murder under Section 302 of the IPC, in so far as it prescribes the death sentence; as well as the constitutionality of Section 354(3) of the CrPC, 1973, is neither unreasonable nor is it against the public interest. It is constitutionally valid and does not violate the letter nor the ethos of Article 19 of the Constitution.

Contract with minors : Void ab initio Case : Mohri Bibee v. Dharamdas Ghosh (1903) 30 IA 114

Mohori Bibee V/S Dharmodas Ghose - Ilr (1903) 30 Cal 539 (Pc) - Minor's Agreement Landmark Case - Bench of Judges: Lord Mcnaughton, Lord Davey, Lord Lindley, Sir Ford North, Sir Andrew Scoble, Sir Andrew Wilson, JJ.

Introduction:-
Mohori Bibee V/S Dharmodas Ghose[1] is a case that covers the ambit of minors agreement. This case basically deals with a minor's contract or a contract with a minor. In India, an agreement or a contract with a minor (a person who is below the age of 18 yrs. or any person who has not completed 18 yrs. of age legally) is void ab-initio (void from very beginning) such rules and regulations are made because, according to law such people does not comes under the ambit of capacity of contract or agreement of doing so.

According to courts opinion, any person who is below 18 yrs of age or who

has not completed the age of 18 yrs. of age i.e. a minor cannot intend to create contract or make major decisions. This case has basically provided us with the knowledge that, since minors are legally incompetent to give their assent so they need to deserve or be provide with the protection in their dealings with the other major persons. After this case , any sought of contact or agreement with the minor was void from beginning. Such contracts are "void ab-initio[2]".

In this case, the Privy Council declared the law that any contact by minor or any minor's agreement is "absolutely void" and it has also been strictly followed and is still growing also.Section 10[3]of Indian Contact Act, 1872 provides for what agreements are contracts? and Section 11[4] provides that a person who are competent to contract.

Facts:-
The facts of this case were as follows:-
v Dharmodas Ghose, was the respondent in this case. He was a minor (i.e. has not completed the 18 years of age) and he was the sole owner of his immovable property. The mother of Dharmodas Ghose was authorized as his legal custodian by Calcutta High Court.

v When he went for the mortgage of his own immovable property which was done in the favor of appellant i.e. Brahmo Dutta, he was a minor and he secured this mortgage deed for Rs. 20,000 at 12% interest rate per year.

v Bhramo Dutta who was a money lender at that time and he secured a loan or amount of Rs. 20,000, and the management of his business was in the control of Kedar Nath, and Kedar Nath acted as the attorney of Brahmo Dutta.

v Dharmodas Ghose's mother sent a notification to Brahmo Dutta informing him about the minority of Dharmodas Ghose on the date on which such mortgage deed was commenced.

v but the proportion or sum of loan that was actually provided was less than Rs. 20,000.

v The negotiator or representative of the defendant, who actually acted instead of on behalf of money lender has given money or sum to the plaintiff, who was a minor and he fully had knowledge about the incompetency of the plaintiff to perform or enter into contract and also that he was incompetent legally to mortgage his property which belonged to him.

v After that, on 10thSept. 1895 Dharmodas Ghose along with his mother brought an legal suit or action against Brahmo Dutta by saying that the mortgage that was executed by Dharmodas was commenced when he was a minor or infant and so such mortgage was void and disproportionate or improper and as a result of which such contract should be revoked or rescinded.

v When this petition or claim was in process, Brahmo Dutta had died and then further the appeal or petition was litigated or indicted by his executor's.

v The plaintiff argued or confronted that in such case no relaxation or any sought of aid should be provided to them because according to him, defendant had deceitfully or dishonestly misinterpreted the fact about his age and because if mortgage is cancelled at the request by defendant i.e. Dharmodas Ghose.

Issues Raised:-
Issues Raised in this case were:-
v Whether the deed was void under section 2, 10[5], 11[6], of Indian Contract Act, 1872 or not?
v Whether the defendant was liable to return the amount of loan which he had received by him under such deed or mortgage or not?
v Whether the mortgage commenced by the defendant was voidable or not?

Judgement:-
v According to he verdict of Trial Court, such mortgage deed or contract that was commenced between the plaintiff and the defendant was void as it was accomplished by the person who was an infant at the time of execution of mortgage.
v When Brahmo Dutta was not satisfied with the verdict of Trial Court he filled an appeal in the Calcutta High Court.

v According to the decision of Calcutta High Court, they agreed with the verdict that was given by Trial Court and it dismissed the appeal of Brahmo Dutta.
v Then he later went to Privy Council for the appeal and later the Privy Council also dismissed the appeal of Brahmo Dutta and held that there cannot be any sought of contract between a minor and a major person.
v The final decision that was passed by the Council were :-
1.Any sought of contract with a minor or infant is void/ void ab-initio (void from beginning).
2.Since minor was incompetent to make such mortgage hence the contact such made or commenced shall also be void and id not valid in the eyes of law.
3.The minor i.e. Dahrmodas Gosh cannot be forced to give back the amount of money that was advanced to him, because he was not bound by the promise that was executed in a contract.

Principles of Law:-
The principles of law that were laid down in this case are:-
v Any contract with a minor or an infant is neither valid nor voidable but is void ab-initio(void from beginning)
v Section 64[7]of Indian Contract Act,1872 is only applicable in the case, where the parties entering in contact are competent to make such contract and is not applied to cases where there is no contract made at all.
v The legal acts done by an representative or any knowledge of an agent means that such acts done or having knowledge of anything is of his principal.

Majority Act, 1875:-
Majority Act, 1875 was enforced on 2ndMarch 1857. It is a law that was enacted to introduce various laws relating to the "law of majority". Prior to the enactment of this act, there was no surety or certainty about the age limit of attaining majority. This act has basically fixed the age limit of attaining majority and i.e. 18 years of age. It states that, every single person who is domiciled in India can only achieve the age of majority only after the completion of age of 18 years, and not before that at any cost. There comes an exception in the case were any particular personal law provides the age of attaining majority only and if not provided than, else any person domiciled

by India shall only achieve majority after the completion of 18 years of age.

In the case were the guardian or a custodian is appointed by any court of justice for a minor in case of a person or his property or for both before the age of 18 years, then in such a case the age of majority would be after attaining the age of 21 years instead of attaining 18 years of age.

Critical Analysis:-
In the case of Mohori Bibee V/S Dharmodas Ghose, the Privy Council strictly defined that any sought of contract or agreement with a minor[8]or with any infant shall be null and void. All contacts with the minors will be void ab-initio. Majority Act, 1875 outlined the definition of a minor, according to such act, any person who is below the age of 18 years or has not completed the age of 18 years shall not be competent to create or enter into any sought of contact or agreement.

According to me any sought of contract in which a minor is party to contract or whether he/she is involved in it shall be void. This perception is correct because minor or infant comes in the category of such people who cannot give there free consent along with the reason that they are not in a situation where they can think in a manner in which a prudent or an ordinary person could do it. An agreement is a deal where free an equal consent of all parties are given but in case of a minor there consent can be dominated by major ones as a result of which , it leads to the violation of one of the condition to form a contract, i.e. free consent[9](a consent is said to be free when it is not caused by Coercion[10], Undue Influence[11], Fraud[12], Miss representation[13]and Mistake[14]).

The court also through its verdict has propounded that, a contact with an infant shall be declared null and void it means that it is neither valid nor voidable. According to me, minors contract shall be avoided and stopped because it sometimes lead to the harmful social, economic and legal effects on the lives and conditions of the minors. Any such person who commits such offence shall be strictly punished by court of law, either through imprisonment or with a fine or with both according to the ambit of the offence committed by the major person.

Conclusion:-

In Mohori Bibee V/S Dharmodas Ghose, at the end it can be concluded that any agreement or deed in which minor is party to it or is included in such contact by any way, such deed or agreement shall be declared null and void because such agreement is no agreement in the eyes of law. Any agreement with an infant cannot be administered against them. In cases minors parents or custodians shall not be liable for the dealings done by the minor without their consent or knowledge, and hence they will not be liable to return the amount back taken by the minor out of the moral obligations. But parents and guardians will be liable to repay back the amount when minor or an infant acted with the consent of the his/her parents or his/ her custodians. If any minor has got any profit out of the void contact the he/she cannot be forced to reimburse it back or make compensation for it.

End-Notes

[1]ILR(1903) 30 Cal. 539 (PC)

[2]Void from beginning

[3]All agreements are contact if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared void by law.

[4]Every person is competent to contract who is the age of majority according to law to which he is subjected, and who is of sound mind and is not disqualified from contracting by any law to which he is subjected.

[5]All agreements are contact if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared void by law.

[6]Every person is competent to contract who is the age of majority according to law to which he is subjected, and who is of sound mind and is not disqualified from contracting by any law to which he is subjected.

[7]When a person at whose option a contract is voidable rescinds it, other party thereto need not to perform any promise therein contained in which he is a promisor. The party rescinding a voidable contract if has received any benefit thereunder from the another party to such contract, restore such benefit , to the person from whom it was received.

[8]Any person who is below the age of 18 years or who has not completed 18 years of age.

[9]Section 14 of Indian Contract Act, 1872.

[10]Section 15 of Indian Contract Act, 1872.
[11]Section 16 of Indian Contract Act, 1872.
[12]Section 17 of Indian Contract Act , 1872.
[13]Section 18 of Indian Contract Act, 1872.
[14]Section 20, 21 and 22 of Indian Contract Act, 1872.

Due process of Law under Article 21 of the Constitution.

. Maneka Gandhi v. Union of India

This case analysis attempts to analyse the judgement of the Supreme Court in the historical decision of Maneka Gandhi v Union of India reported in AIR 1978 SC 597 which expanded the scope of Article 21 of the Constitution and changed the face of Indian polity and law.

'Personal Liberty' means freedom from physical restraint and coercion which is not authorised by law. This article is about Maneka Gandhi vs. Union of India[1] , which is famously known as Maneka Gandhi's case or Personal liberty case. This case is not only a landmark case for the interpretation of Article 21 of Constitution of India but it also gave an entirely new point of look to the Chapter III of the Constitution of India.

Introduction
Prior to this case decision, Article 21 guaranteed the Right to Life and Personal Liberty only against the arbitrary action of the executive and not from the legislative action. This case just turned up pages and extended the protection against legislative actions.

This case is regarded as one of the best judgements delivered by the apex court as it was instrumental in restoring people's faith in the judiciary and constitutional values. It was in this case that the "Golden triangle" rule was firmly established by the SC and the court firmly cemented its seat as the watchdog of democracy.

This decision which was delivered by a 7-judge bench of the Hon'ble Supreme Court on 25th January 1978, this decision, marked the development of a new era with respect to the interpretation of fundamental rights guaranteed in the Constitution. This decision altered the very face of the Indian Constitution and marked a new era of development in the concept of personal liberty. The decision stands as a beacon-light adding new dimensions to the interpretation of the fundamental rights guaranteed by Part III of the Constitution.

Facts Of The Case

1.The petitioner Maneka Gandhi's passport was issued on 1st June 1976 as per the Passport Act of 1967. On 2nd July 1977, the Regional Passport Office (New Delhi) ordered her to surrender her passport. The petitioner was also not given any reason for this arbitrary and unilateral decision of the External Affairs Ministry, citing public interest.

2.The petitioner approached the Supreme Court by invoking its writ jurisdiction and contending that the State's act of impounding her passport was a direct assault on her Right of Personal Liberty as guaranteed by Article 21. It is pertinent to mention that the Supreme Court in **Satwant Singh Sawhney v. Ramarathnam**[2] held that right to travel abroad is well within the ambit of Article 21, although the extent to which the Passport Act diluted this particular right was unclear.

3.The authorities, however, answered that the reasons are not to be specified in the "interest of the general public". In response, the petitioner filed a writ petition under Art 32 for violation of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution alleging that Section 10(3)(c) of the Act was ultra vires the constitution.

Issues Before The Court

1.Whether the Fundamental Rights are absolute or conditional and what is the extent of the territory of such Fundamental Rights provided to the citizens by the Constitution of India?

2.Whether 'Right to Travel Abroad' is protected under the umbrella of Article 21.

3.What is the Connection between the rights guaranteed under Article 14, 19 and 21 of the Constitution of India?

4.Determining the scope of " Procedure established by Law"

5.Whether the provision laid down in Section 10(3)(c) of the Passport Act 1967 is violative of Fundamental Rights and if it is whether such legislation is a concrete Law?

6.Whether the Impugned order of Regional Passport Officer is in contravention of principles of natural justice?

Arguments Of The Petitioners:
Through the administrative order that seized the passport on 4th July 1977, the State has infringed upon the Petitioner's fundamental rights of freedom of speech & expression, right to life & personal liberty, right to travel abroad and the right to freedom of movement.

The provisions given in Articles 14, 19 & 21 should be read together and aren't mutually exclusive. Only a cumulative reading and subsequent interpretation will lead to the observance of principles of natural justice and the true spirit of constitutionalism.

India might not have adopted the American concept of the "due process of law", nevertheless, the procedure established by law should be fair and just, reasonable, and not be arbitrary.
Section 10(3)(c) of the Passport Act violates Article 21 insofar as it violates the right to life & personal liberty guaranteed by this Article.

Audi Altrem Partem i.e. the opportunity of being heard is invariably acknowledged as a vital component of the principles of natural justice. Even if these principles of natural justice are not expressly mentioned in any of the provisions of the Constitution, the idea behind the spirit of Fundamental Rights embodies the very crux of these principles.

Contentions Of The Respondents:
The respondent stated before the court that the passport was confiscated since the petitioner had to appear before a government committee for a hearing.
The respondent asserted that the word 'law' under Article 21 can't be understood as reflected in the fundamental rules of natural justice, emphasising the principle laid down in the A K Gopalan case[3].

Article 21 contains the phrase "procedure established by law" & such procedure does not have to pass the test of reasonability and need not necessarily be in consonance with the Articles 14 & 19.

The framers of our Constitution had long debates on the American "due process of law" versus the British "procedure established by law". The marked absence of the due process of law from the provisions of the Indian Constitution clearly indicates the constitution-makers' intentions.

Judgement Of The Court

1.The court said that section 10(3)(c) of passport act, 1967 is void because it violates Article 14 of Indian constitution because it confers vague and undefined power to the passport authority. it is violative of Article 14 of the Constitution since it doesn't provide for an opportunity for the aggrieved party to be heard. It was also held violative of Article 21 since it does not affirm to the word "procedure" as mentioned in the clause, and the present procedure performed was the worst possible one. The Court, however, refrained from passing any formal answer on the matter, and ruled that the passport would remain with the authorities till they deem fit.

2.This immensely important judgement was delivered on 25th January 1978 and it altered the landscape of the Indian Constitution. This judgement widened Article 21's scope immensely and it realized the goal of making India a welfare state, as assured in the Preamble. The unanimous judgement was given by a 7-judge bench. Before the enactment of the Passport Act 1967, there was no law regulating the passport whenever any person wanted to leave his native place and settle abroad. Also, the executives were entirely discretionary while issuing the passports in an unguided and unchallenged manner.

3.In **Satwant Singh Sawhney v. D Ramarathnam** the SC stated that: **Personal liberty** in its ambit, also includes the right of locomotion and travel abroad. Hence, no person can be deprived of such rights, except through procedures established by law. Since the State had not made any law regarding the regulation or prohibiting the rights of a person in such a case, the confiscation of the petitioner's passport is in violation

of Article 21 and its grounds being unchallenged and arbitrary, it is also violative of Article 14.

4.Further, clause (c) of section 10(3) of the Passports Act, 1967 provides that when the state finds it necessary to seize the passport or do any such action in the interests of sovereignty and integrity of the nation, its security, its friendly relations with foreign countries, or for the interests of the general public, the authority is required to record in writing the reason of such act and on-demand furnish a copy of that record to the holder of the passport.

5.The Central Government never did disclose any reasons for impounding the petitioner's passport rather she was told that the act was done in **the interests of the general public** whereas it was found out that her presence was felt required by the respondents for the proceedings before a commission of inquiry. The reason was given explicit that it was not really necessarily done in the public interests and no ordinary person would understand the reasons for not disclosing this information or the grounds of her passport confiscation.

6.The fundamental rights conferred in Part III of the Constitution are not distinctive nor mutually exclusive." Any law depriving a person of his personal liberty has to stand a test of one or more of the fundamental rights conferred under Article 19. When referring to Article 14, **ex-hypothesi** must be tested. The concept of reasonableness must be projected in the procedure. The phrase used in Article 21 is "procedure established by law" instead of **due process of law** which is said to have procedures that are free from arbitrariness and irrationality. There is a clear infringement of the basic ingredient of principles of natural justice i.e., **audi alteram partem** and hence, it cannot be condemned as unfair and unjust even when a statute is silent on it.

7.It is true that fundamental rights are sought in case of violation of any rights of an individual and when the State had violated it. But that does not mean, Right to Freedom of Speech and Expression is exercisable

only in India and not outside. Merely because the state's action is restricted to its territory, it does not mean that Fundamental Rights are also restricted in a similar manner. It is possible that certain rights related to human values are protected by fundamental rights even if it is not explicitly written in our Constitution. For example, Freedom of the press is covered under Article 19(1)(a) even though it is not specifically mentioned there.

The right to go abroad is not a part of the Right to Free Speech and Expression as both have different natures and characters.

A.K Gopalan was overruled stating that there is a unique relationship between the provisions of Article 14, 19 & 21 and every law must pass the tests of the said provisions. Earlier in Gopalan, the majority held that these provisions in itself are mutually exclusive. Therefore, to correct its earlier mistake the court held that these provisions are not mutually exclusive and are dependent on each other.

Critical Analysis And Personal Opinion:
The landmark ruling in Maneka Gandhi versus Union of India, which stands as a bulwark of the Right of Personal Liberty granted by Article 21 of the Constitution, started when the passport of the petitioner in this case, was impounded by the authorities under the provisions of the Passport Act.

After this case the Supreme Court became the watchdog to protect the essence of the Constitution and safeguard the intention of the constitutional assembly who made it. The majority of judges opined that any legislation or section should be just, fair and reasonable and in it's absence even the established or prevailed law can be considered arbitrary.

The judges mandated that any law which deprives a person of his personal liberty should stand the test of Article 21,14 as well as 19 of the Constitution. Also principles of natural justice are sheltered under article 21 and therefore no person is deprived of his voice to be heard inside the court. Further to declare any state action or legislation invalid, the "golden triangle".

This arbitrary act of impounding the passport eventually led to the pronouncement of a unanimous decision by a seven-judge bench of the apex court comprising M.H. Beg (CJI), Y.V. Chandrachud, V.R. Krishna Iyer, P.N. Bhagwati, N.L. Untwalia, S. Murtaza Fazal Ali and P.S Kailasam [4].

That, the landmark judgment of Maneka Gandhi V. Union of India is so perfectly given by the Hon'ble Seven Judge Bench of Supreme court. That, the very concept of fair procedure which was been in the case is what justice is. Lastly, it is the spirit not the form of law that keeps the justice alive.

Conclusion

The case is considered a landmark case in that it gave a new and highly varied interpretation to the meaning of 'life and personal liberty' under Article 21 of the Constitution. Also, it expanded the horizons of freedom of speech and expression to the effect that the right is no longer restricted by the territorial boundaries of the country.

In fact, it extends to almost the entire world. Thus the case saw a high degree of judicial activism, and ushered in a new era of expanding horizons of fundamental rights in general, and Article 21 in particular. This case is called as Golden Triangle Case where article 14, 19 and 21 were challenged together and it was appreciated by the apex court.

This decision restored the people's faith in the judicial system and a guarantee that their fundamental rights will be protected. The court departed from its earlier position in the AK Gopalan case which held that right to life and personal liberty can be restricted by the procedure established by law even if it is not fair and reasonable. In this case, this regressive view was discarded by the court and held that that procedure established by law meant procedure that eventually was reasonable fair and just.

This decision rendered void the plain and simple meaning of procedure established by law and introduced for the first time the concept of due process of law into the Indian constitution. The court also accepted that Right to Travel Abroad as a very important component of Right to Liberty, if this right is not granted, liberty is distorted. By this judgement, the court

increased the scope of Article 21 of the Constitution and made it the duty to interpret Article 21 in a manner which serves the people's interest at most.

No right to strike, but right to Collective Bargaining
Dharm Dutta & Others vs. Union of India [(2004) 1 SCC 712]

The history of labour struggle is nothing but a continuous demand for a fair return to labour expressed in varied forms i.e. (a) Increase in wages, (b) Resistance to decrease in wages, and (c) grant of allowances and benefits etc. If a labourer wants to achieve these gains individually, he fails because of his weaker bargaining power, the management with the better economic background stands in a better position to dictate its terms. Strike is an important weapon in the hands of the labour used to strengthen his bargaining power.

Though right to strike is a statutory and a legal right however it cannot be said to be a fundamental right and this view has been reiterated by the Supreme Court in various decisions.
Right to strike as a legal right:
The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognizes it as their implied right. Striking work is integral to the process of wage bargaining in an industrial economy.

A worker has no other means of defending her/his real wage other than seeking an increased money wage. If a capitalist does not grant such an increase, s/he can be forced to come to a negotiating table by striking workers. This s/he can do because the earnings of the capitalist are contingent upon the worker continuing to work. The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of response/expression by the working people, wherever the employer-employee relationship exists, whether recognized or not.

In Gujarat Steel Tubes v. Its Mazdoor Sabha (1980), Justice Bhagwati opined

that right to strike is integral of collective bargaining. He further stated that this right is a process recognized by industrial jurisprudence and supported by social justice.

Strike as a statutory right:
The scheme of the Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term industry by the courts includes hospitals, educational institutions, clubs and government departments. Section 2 (q) of the Act defines strike as "strike means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal, under; a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment". Sections 22, 23, and 24 all recognize the right to strike. Section 24 differentiates between a legal strike and an illegal strike.

It defines illegal strikes as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally recognized. It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike. The statutory provisions thus make a distinction between the legality and illegality of strike. It is for the judiciary to examine whether it is legal or illegal.

The workers right to strike is complemented by the employers right to lock-out, thus maintaining a balance of powers between the two. Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike. Sections 18 and 19 of the Act confer immunity upon trade unions on strike from civil liability.

Right to strike under international conventions:
Article 8 (1) (d) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) provides that the States Parties to the Covenant shall undertake to ensure: "the right to strike, provided that it is exercised in conformity with the laws of the particular country. Article 2 (1) of the Covenant provides: "Each State Party to the present Covenant undertakes to take steps, ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means,

including particularly the adoption of legislative measures".

India is a signatory to the Covenant and is therefore bound under Article 2 (1) to provide for the right to strike as enshrined in Article 8 (1) (d), through legislative measures or by other appropriate means. Thus, the aforesaid domestic laws are the by-products of the international obligations and cannot be read casually.

Right to strike has also been recognised by the conventions of the International Labour Organization (ILO). By virtue of being a member of the ILO, India is under obligation to satisfy at least the fundamental rights promoted by the Conventions, irrespective of it having ratified them or not. Further, India is not an ordinary member of the ILO, but one of the founding members of the Organization.
View of SC on right to strike:
Even as early as 1961, the Supreme Court had held in Kameshwar Prasad v. State of Bihar (1962) that even a very liberal interpretation of article 19 (1) (c) could not lead to the conclusion that the trade unions have a guaranteed fundamental right to strike. In All India Bank Employees Association v. National Industrial Tribunal (1962) also the SC held that right to strike cannot said to be a part of Article 19(1)(c) of the Constitution.

It was a culmination of the ratios of the Kameshwar Prasad and the A.I.B.E. cases that resulted in the decision in the highly contentious Rangarajan case. In T.K. Rangarajan v. Government of Tamilnadu and Others (2003) the SC opined that not only there existed no fundamental right to strike but also stated that the Government employees have no "legal, moral or equitable right".

Taking the facts into consideration of the Rangarajan case, the action of the Tamil Nadu government terminating the services of all the employees who have resorted to strike for their demands was challenged before the Honble High court of Madras, by writ petitions under Articles 226/227 of the constitution. On behalf of the government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintainance Act (TESMA), 2002 and also the Tamil Nadu Ordinance 2 of 2003. The division bench of the court set aside the interim order, and

pronounced that the writ petitions were not maintainable as the Administrative Tribunal was not approached. The division bench judgment was challenged before the Supreme Court.

The Rangarajan case relies on a number of case laws dating back to the 1960s (Kameshwar Prasad & AIBE Association). The only recent judgments that the Court relied upon - namely, Harish Uppal vs, UOI (2003) and Bharat Kr. Palicha vs. State of Kerela (1998) - to demonstrate that there is no right to strike seem to have been misapplied, contrary to their letter and spirit. In Harish Uppal the court held that advocates have no right to strike. However the court also opined:

"in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day".

The court, therefore, acknowledges that the right to strike exists and which can be exercised if a rare situation demands so. The apex court has only tried to restrict the right to strike of advocates with regards to the significant role they play in the administration of justice. For all others this sacred right holds good force.

In Bharat Kr. Palicha vs. State of Kerela the apex court has held bundhs to be unconstitutional. The same is relied upon in the Rangarajan case. However the court failed to notice that the judgment does not keep a bundh and a general strike on the same pedestal. Where, on the one hand, a bundh is unconstitutional, a hartal or a general strike is very much legal. The Rangarajan case suffers from an illegality insofar as it attempts to place a blanket ban on all kinds of strikes irrespective of whether they are hartals or bundhs.

The Rangarajan case simply ignores statutory provisions in the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926, and an equal number of case laws laid down by larger benches that have recognized the right to strike. It also fails to consider International Covenants that pave the way for this right as a basic tenet of international labour standards.

In B.R. Singh v. Union of India (1990), SC opined that:
"The Trade Unions with sufficient membership strength are able to bargain more effectively with the management than individual workmen. The bargaining strength would be considerably reduced if it is not permitted to demonstrate by adopting agitational methods such as work to rule, go-slow, absenteeism, sit-down strike, and strike. This has been recognized by almost all democratic countries".

In Gujarat Steel Tubes v. Its Mazdoor Sabha (1980) also the right to strike has been recognised by the SC. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of Rangarajan. In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation.

Strike: A weapon of last resort
While on the one hand it has to be remembered that a strike is a legitimate and sometime unavoidable weapon in the hands of labour, it is equally important that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that any kind of demand for a strike can be commenced with impunity without exhausting the reasonable avenues for peaceful achievement of the objects.

There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect the labour to wait after asking the government to make a reference. In such cases the strike, even before such a request has been made, may very well be justified.

Thus, initially, employees must resort to dispute settlement by alternative mechanisms. Only under extreme situations when the alternative mechanisms have totally failed to provide any amicable settlement, can they resort to a strike as a last resort.

Conclusion:
Though the Apex Court has not recognised the right to strike as a fundamental right however time and again the Court has also settled that the right to strike is a legal right, one that is recognized by most democratic countries of the world.

Principles laid down for Compulsory Retirement

State of Gujarat v. Umedbhai M. Patel (AIR 2010 SC 1109)

The respondent, during the relevant time, was an Executive Engineer working in the Narmada Development Department of the State of Gujarat. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. An enquiry was initiated against him alleging that he had committed acts of misuse of power in connection with the purchase of Tarpauline. While the respondent was continuing under suspension, the Govt. of Gujarat passed an order of compulsory retirement by invoking Clause (aa) (i) (1) of Rule 161 (1) of the Bombay Civil Services Rules, 1959, with effect from 13.2.1987. The respondent was due to retire on superannuation by the end of August 1988, his date of birth being 17.8.1930. In the order of compulsory retirement, it was stated that the case relating to continuance of the respondent in Govt. service beyond the age of 50 and 55 years was reviewed. The respondent challenged the order of his compulsory retirement before the High Court of Gujarat and by the impugned judgment, the Division Bench of the High Court set aside that order on the ground that the same was punitive in nature and was passed with an oblique purpose to punish the respondent for the charges which were neither investigated nor had the respondent been given reasonable opportunity of hearing. This judgment is challenged before us.

We heard the learned counsel for the appellant-State as also learned counsel for the respondent. Elaborate arguments were advanced by the counsel for the appellant-State that the impugned order is not punitive in nature and that the services of the respondent were dispensed with in public interest. It was argued that the respondent's services were no longer useful and that he had committed acts whereby the State Govt. suffered pecuniary losses. It was also contended that the order of compulsory retirement passed by the State Govt. Is not by way of punishment and the respondent is entitled to get all the benefits.

Learned counsel for the respondent, on the other hand, supported the impugned judgment and contended that the order of compulsory retirement was passed on the specific allegations, for which the respondent was under suspension awaiting formal enquiry, and under that circumstance, the

impugned order of compulsory retirement was patently illegal. Reliance was placed on various decisions of this Court.

This Court, in a number of cases, had occasion to consider the law relating to compulsory retirement and has laid down various principles. In State of Orissa & Ors vs. Ram Chandra Das (1996) 5 SCC 331, this Court held in paragraph 3 of the judgment as follows :

"It is needless to reiterate that the settled legal position is that the Government is empowered and would be entitled to compulsorily retire a government servant in public interest with a view to improve efficiency of the administration or to weed out the people of doubtful integrity or are corrupt but sufficient evidence was not available to take disciplinary action in accordance with the rules so as to inculcate a sense of discipline in the service. But the Government, before taking such decision to retire a government employee compulsorily from service, has to consider the entire record of the government servant including the latest reports.

[Emphasis supplied] In State of Gujarat & Anr. vs. Suryakant Chunilal Shah (1999) 1 SCC 529, the State Govt. challenged the judgment of the Division Bench of the Gujarat High Court by which the order passed by the Single Judged was set aside. The Division Bench held that the order of compulsory retirement was bad and thereupon the State of Gujarat filed an appeal. In that case, two criminal complaints had been filed against the respondent-Asstt. Food Controller; one alleging that he had illegally issued cement permits to some bogus institutions; and second that he had fabricated some rubber stamps of the Government for the purpose of issuing illegal permits. But, there were no adverse entries in his confidential records and his integrity was not doubted at any stage. However, the authorities thought that the investigation and subsequent prosecution of the respondent would take long time and it would be better to dispense with his services by compulsorily retiring him. The review committee, therefore, recommended his compulsory retirement. This Court, in paragraph 28 of the judgment, held as under:

"There being no material before the Review Committee, inasmuch as there were no adverse remarks in the character roll entries, the integrity was not doubted at any time, the character roll entries subsequent to the respondent's promotion to the post of Assistant Food Controller (Class II) were not available, it could not come to the conclusion that the respondent was a man of doubtful integrity nor could have anyone else come to the conclusion that the respondent was a fit person to be retired compulsorily from service. The order, in the circumstances of the case, was punitive having been passed for the collateral purpose of his immediate removal rather than in public interest."

In Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Baripada & Anr. (1992) 2 SCC 299, following the decision in Union of India vs. J.N. Sinha (1970) 2 SCC 458, this Court held thus:

"(I) An order of compulsory retirement is not a punishment. It implies no stigma or any suggestion of misbehaviour.

(ii) The order has to be passed by the government on forming the opinion that it is in the public interest to retire a government servant, compulsorily. The order is passed on the subjective satisfaction of the government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order is passed (a) mala fide or (b) that it is based on no evidence or (c) that it is arbitrary -- in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

(iv) The government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter -- of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records/character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting,

more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. The circumstance by itself cannot be a basis for interference."

In Allahabad Bank Officers' Association & Anr. vs. Allahabad Bank & Ors. (1996) 4 SCC 504, this Court, in paragraph 5 of the judgment on page 508, held as under:

"The power to compulsorily retire a government servant is one of the facets of the doctrine of pleasure incorporated in Article 310 of the Constitution. The object of compulsory retirement is to weed out the dead wood in order to maintain efficiency and initiative in the service and also to dispense with the services of those whose integrity is doubtful so as to preserve purity in the administration. ....

While misconduct and inefficiency are factors that enter into the account where the order is one of dismissal or removal or of retirement, there is this difference that while in the case of retirement they merely furnish the background and the enquiry, if held -- and there is no duty to hold an enquiry -- is only for the satisfaction of the authorities who have to take action, in the case of dismissal or removal they form the very basis on which the order is made, as pointed out by this Court in Shyam Lal vs. State of U.P. [AIR 1954 SC 369]".

In Union of India & Ors. vs. Dulal Dutt (1993) 2 SCC 179, this Court reiterated the view held right from the case of R.L. Butail vs. Union of India (1970) 2 SCC 876 and Union of India vs. J.N. Sinha (1970) 2 SCC 458 "that an order of a compulsory retirement is not an order of punishment. It is actually a prerogative of the Government but it should be based on material and has to be passed on the subjective satisfaction of the Government. Very often, on enquiry by the Court, the Government may disclose the material but it is very much different from the saying that the order should be a speaking order. No order of compulsory retirement is required to be a speaking order."

In another decision in J.D. Srivastava vs. State of M.P. & Ors. (1984) 2 SCC 8, in paragraph 7 of the judgment, it was observed by this Court as under:

"But being reports relating to a remote period, they are not quite relevant for the purpose of determining whether he should be retired compulsorily or not

in the year 1981, as it would be an act bordering on perversity to dig out old files to find out some material to make an order against an officer."

The law relating to compulsory retirement has now crystallized into definite principles, which could be broadly summarised thus:

(i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.

(ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.

(iii) For better administration, it is necessary to chop off dead- wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

In the instant case, there were absolutely no adverse entries in respondent's confidential record. In the rejoinder filed in this Court also, nothing has been averred that the respondent's service record revealed any adverse entries. The respondent had successfully crossed the efficiency bar at the age of 50 as well 55. He was placed under suspension on 22.5.1986 pending disciplinary proceedings. The State Govt. had sufficient time to complete the enquiry against him but the enquiry was not completed within a reasonable time. Even the Review Committee did not recommend the compulsory retirement of the respondent. The respondent had only less than two years to retire from service. If the impugned order is viewed in the light of these facts, it could be said that the order of compulsory retirement was passed for extraneous reasons. As the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the

absence of any adverse entries in his service record to support the order of compulsory retirement, we are of the view that the Division Bench was right in holding that the impugned order was liable to be set aside. We find no merit in the appeal, which is dismissed accordingly. However, three months' time is given to the appellant-State to comply with the directions of the Division Bench, failing which the respondent would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him.

Power of High Court to queash FIR, Criminal Complaints and pending Criminal Proceedings u/s. 482 of the Cr.P.C.

Rupan Deol Bajaj v. K. P. S. Gill (AIR 1996 SC 309)

State of Hariyana v. Bhajan Lal (AIR 1992 SC 604)

2) Legal Provisions In India For Quashing Of Criminal Proceedings

Code of Criminal Procedure (hereinafter referred to as Code/CrPC), 1973 has laid out the provisions for quashing of criminal proceedings. Section 482 o CrPC says,

"Saving of inherent powers of High Court Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

The decisions of High Courts in this regard, ought to be guided by following twin objectives, as laid down in Narinder Singh v. State of Punjab (2014) 6 SCC 466:

1.Prevent abuse of the process of court.

2.Secure the ends of justice.

3) Rules Governing The Petitions Which Pray For Quashing of Criminal Proceedings

Section 482 of CrPC, which deals with the power of court to quash criminal proceedings, hasnt given the details of that what exactly constitutes the

inherent power of court. In that sense, the Code is very vague as it doesnt lay out the grounds on which the foundations of the inherent power of court lay.

Furthermore, there has been consistent inconsistency in the judgments of the Supreme Court of India with regard to the application of Section 482 of CrPC. Consequently, the application of section 482 of CrPC is a very agitated issue in litigation along with being a strongly debated concept in the legal academic circles.

Nevertheless, there are some cases which have got wide acceptance in the legal fraternity and hence, are used as the minor guiding principles (landmark cases being the major ones) governing the cases of quashing of criminal proceedings.

Some of these cases are:
Prashant Bharti v. State of NCT of Delhi (2013) 9 SCC 293:
In order to determine the veracity of a prayer for quashing the criminal proceedings raised by an accused under Section 482 of the CrPC, the following questions have to be analyzed by the High Court:

1.Whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

2.Whether the material relied upon by the accused is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

3.Whether the material relied upon by the accused, has not been refuted by the prosecution / complainant; and / or the material is such, that it cannot be justifiably refuted by the prosecution / complainant?

4.Whether proceeding with the trial would result in an abuse of process of the court and hence, would not serve the ends of justice?

If the answer to all the questions is in affirmative, the Court should quash the proceedings by exercising its power under Section 482 of CrPC.
Parbatbhai Ahir v. State of Gujarat (4 Oct, 2017):
In this case, the Supreme Court referred to various precedents and summarised the following principles which ought to govern the power of High Court under Section 482 of CrPC,

1.Section 482preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of

justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

2.The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

3.In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction underSection 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

4.While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised;
a) To secure the ends of justice.
b) To prevent an abuse of the process of any court.

5.The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

6.In the exercise of the power under ction 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

7.As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute.

They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

8.Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

9.In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of aconviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and.

10.There is yet an exception to the principle set out in propositions (viii) and above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

4) Quashing of criminal proceedings in matrimonial cases
Section 498 - A was brought in by the Indian legislature to help the hapless women who were worst victims of their husbands ire. But, of late, there have been innumerable instances of misuse of Section 498 - A. The situation has become so severe that there are dedicated non-government organizations (NGOs) which solely focus on advocating the repeal of Section 498. Also, there have been numerous instances in India, where the courts have criticised the provisions of Section 498 A, decried its use, and prodded the legislature to have a look at the issue.

For instance, the Supreme Court of India observed in the case of **Sushil Kumar Sharma v. Union of India** (19 July, 2005), The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have filed the cases with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery...

The Supreme Court of India has, many a times, held that the proceedings being pursued under Section 498 - A of IPC ought to be quashed if the

chances of conviction are very bleak or the case has been filed with ulterior motives (in most cases, the ulterior motive is to settle personal scores).

In **B S Joshi v. State of Haryana** 2003 (4) SCC 675, the Supreme Court justified the exercise of powers under Section 482 CrPC to quash the proceedings in matrimonial cases to secure the ends of justice in view of the special facts and circumstances of the case even where the offences alleged are non-compoundable. This very judgment was used by the Delhi High Court to quash criminal proceedings which had been initiated under Section 498 - A of the Indian Penal Code (hereinafter referred to as IPC), in the case of **Girish Pandey v. State** (20 Oct, 2016).

Furthermore, it has been held in the case of **Geeta Mehrotra v. State of Uttar Pradesh** (17 Oct, 2012)by the Supreme Court of India that making general allegations against husband without any conclusive proof is ground enough to quash criminal proceedings instituted under Section 498- A of IPC.

5) Landmark cases related to abatement of criminal proceedings
Despite all the contradictions that appear in the various judgments of the supreme Court with respect to quashing of criminal proceedings, there are following two cases which are considered string authorities on the subject: In the case of **State of Haryana v. Bhajan Lal** 1992 AIR 604, the Supreme Court had laid down following seven categories of cases in which the court can quash criminal proceedings:

1.Where the allegations made in the FIR, even if taken at face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

2.Where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)of the Code except under an order of a Magistrate within the purview ofSection 155(2) of the Code.

3.Where the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4.Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer, unless a Magistrate has issued an order for the same, as contemplated under Section 155(2)of the Code.

5.Where the allegations made in the FIR are absurd to the extent that no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6.Where there is an express legal bar engrafted in any of the provisions f the Code or the concerned Act, under which a criminal proceeding is instituted, with regard to the institution and continuance of the proceedings and / or where there is a specific provision inthe Codeor the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7.Where a criminal proceeding is manifestly attended with mala fide intention and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and / or personal grudge.

In the case of **R P Kapur v. State of Punjab** 1960 AIR 862, the Supreme Court of India held that criminal proceedings against a person can be quashed if the case being dealt with belongs to any one of the following three classes of cases:

1.Where there is a legal bar against institution or continuance of the criminal proceedings.

2.Where the allegations in the FIR do not constitute an offence, even if taken at face value and in their entirety.

3.Where the allegations made constitute an offence, but there is no evidence which can prove them.

Women across the globe have raised their voices against the injustice and indeed they have been heard. One such voice was raised by Mrs. Rupan Deol Bajaj, an I.A.S officer, Punjab Cadre, against the highest ranking police officer Mr. K.P.S Gill for molestation. The case dragged on for 17 years with the final judgment of the Supreme Court in 2005. The case gained much popularity in the media as the **"butt slapping case."**

Background:

●Mrs. Rupan Deol Bajaj, was invited to a dinner party organized by S.L. Kapoor, the Punjab Financial Commissioner. Mrs. Bajaj went to the party

together with her husband Mr. B.R. Bajaj, a senior I.A.S. officer. Several invitees were at the party, including Mr. Gill.

- When Mrs. Bajaj was busy talking to other ladies, Mr. Gill called out to her saying he wanted to speak to her. She excused herself and went to talk to him. It was at this moment, Mr. Gill misbehaved by pulling her chair closer to his, not once but twice. Mrs. Bajaj felt this inappropriate and made her way back to the ladies.
- After a few minutes, Mr. Gill came closer to her and blocked her way. This made her frightened. She stood up to leave whereupon, Mr. Gill slapped her on the posterior.

Facts:

- ***18th July, 1988:***

Mrs. Bajaj attended the party wherein she was being slapped on the posterior by Mr.Gill

- ***29th July, 1988:***

Mrs. Bajaj registered a complaint with the Inspector General of Police, Chandigarh, accusing Mr. Gill of offences under Sections 341, 342, 352, 354 and 509 of Indian Penal Code (IPC). The complaint was treated as the FIR and a case was registered at the Central Police Station, Chandigarh. The investigation was also initiated in the matter.

- ***22nd November, 1988:***

Mr. Bajaj, complained to the Chief Judicial Magistrate (CJM) for the same offences against Mr.Gill. CJM transferred the complaint to the Judicial Magistrate (JM). The JM then asked the Investigating Officer to submit the investigation report.

- ***16th December, 1988:***

Mr.Gill filed a petition in the Punjab and Haryana High Court under section 482 of the Criminal Procedure Code (Cr.P.C) for quashing the FIR and complaint made against him. The High Court passed an interim order holding investigation into the FIR; however the proceeding concerning the complaint

was allowed. As a result, the JM then proceeded with the complaint and heard the matter. It rejected the claim of privilege made under Section 123 and 124 of the Indian Evidence Act, by two witnesses namely Mr. Y.S. Ratra (IAS Officer of the Government of Punjab) and Mr. J.F. Rebeiro (Adviser to the Government of Punjab).

● ***24th January, 1989:***

A criminal revision petition was filed by the State of Punjab in the Punjab and Haryana High Court.

● ***29th May, 1989:***

The High Court heard the petition filed by Mr.Gill under Section 482 of Cr.P.C. The court thereby quashed the FIR and complaint made against him on the following grounds:

1.The accusations stated in the FIR do not constitute any cognizable offence.
2.The harm caused to Mrs. Bajaj falls within the provisions of Section 95 of IPC.
3.The accusations were unusual and inconceivable.
4.Section 157 of Cr.P.C does not empower the Investigating Officer to start the investigation in case of non- cognizable offences.
5.Unreasonable delay of 11 days in filing the FIR.

It was against this order that Mr. and Mrs. Bajaj filed the present petition in the Supreme Court.

Issues:

- Whether the accusations stated in the FIR account for any offence in the Indian Penal Code?
- Whether the High Court was justified in quashing the FIR and complaint in the exercise of the power given under Article 226 of the Constitution?

Critical Analysis:

- The learned counsel for the petitioners while advancing her argument stressed on the fact that Section 482 of Cr.P.C. which saves the inherent powers of the High Court does not include quashing of FIR in case of cognizable offences.

●The applicability of Section 95 IPC was highly criticized as outraging a woman's modesty cannot be considered as a trivial matter.
●Delay in filing the FIR cannot be a valid ground for quashing it as the reason for the delay was itself Stated in the FIR.
●The learned Additional Solicitor General for the respondent submitted that the reasons stated by the High Court for quashing the FIR was reasonable.

Judgment:

●On plain reading of Section 354 and 509 IPC and considering the judgment given by this Court in the State of Punjab vs. Major Singh (AIR 1967 SC 63), it was held that the act of slapping on the posterior of a woman amounted to outrage her modesty. Also, the main ingredient of Section 354 that is "culpable intention" was said to be possessed by Mr.Gill based on the circumstances given.
●The accusations stated under section 341, 342 and 352 IPC cannot be said to have been committed by the respondent. Hence, the accusations in respect of the said section do not make up for any offence.
●The High Court was not justified in the application of Section 95 in the present case. The Supreme Court, thereby set aside the judgment delivered by the High Court and dismissed the petition filed by Mr.Gill under Section 482 Cr.P.C.
●The Apex Court further directed that the Chief Judicial Magistrate should proceed with the case in respect of offences under Sections 354 and 509 and make a decision on the basis of evidence produced before it.

Later proceedings:

●***Chief Judicial Magistrate's decision:***

As per the direction given by the Supreme Court, the Chief Judicial Magistrate conducted a trial. The accused was held guilty under section 354 and 509 IPC. He was sentenced to 3 months of imprisonment and fine of Rs. 500 in respect of offence under section 354 and 2 months of imprisonment with fine of Rs. 200 in respect of section 509.

●***Sessions Court decision:***

The accused appealed to the Sessions Court, which confirmed the conviction and directed the accused to be released on probation. The fine imposed was increased to rupees fifty thousand.

High Court decision:

Aggrieved by the decision of the Sessions Court, the accused filed an appeal in the Punjab and Haryana High Court. The Court upheld the decision of the Sessions Court, however the amount of the fine was increased to 2 lakh rupees. Further, the accused was asked to pay an additional sum of rupees twenty five thousand to Mrs. Bajaj for the cost of litigation incurred.

- ***Supreme Court decision:***

The decision of the High Court was appealed in the Supreme Court by the accused as well as the complainant (Mrs. Bajaj). The accused challenged his conviction and sentence of imprisonment in the petition **"Kanwar Pal Singh Gill vs. State (Criminal Appeal 1032 of 1998)"**. While the complainant prayed for the enhancement of the punishment imposed on the accused in the petition **"Mrs. Rupan Deol Bajaj vs. Kanwar Pal Singh Gill (Criminal Appeal no. 430 of 1999)"**. The Apex Court was of the view that the appeals were without any substance and thereby dismissed both the appeals.

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Conclusion:

Mrs. Rupan Deol Bajaj, through her long battle has inspired many women worldwide. This case was the first of its kind to give a wide interpretation to the word "modesty". It has been observed that the High Court while exercising power under section 482 Cr.P.C must show utmost care. In 2010, she made a request to the Government to take back the Padma Shri award given to Mr. KPS Gill.

State of Haryana vs Bhajan Lal [1992 Supp (1) SCC 335]

The Supreme Court has held in Bhajan Lal case that the High Court can quash the FIR to protect the accused from malicious prosecution. It has quashed the criminal proceeding against the Bhajan Lal, the then Chief Minister of Haryana. When a criminal proceeding is instituted with mala-fide

intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the High Court in the exercise of its inherent power vested by section 482 crpc to quash the pending criminal proceedings.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.